system, subassembly, or other part to be redesigned in order to restart the limitation period.

The Ninth Circuit Court of Appeals opinion frustrates Congress' intent "to limit excessive product liability costs, while at the same time affording fair treatment to persons injured in general aviation aircraft accident." H.R. Rep. 103-525(I). In passing GARA, Congress recognized that almost all of the registered general aviation aircraft were older than eighteen years old and stated, "since almost every major component of the aircraft will be replaced over its lifetime, the rolling aspect of the statute of repose provides that victims and their families would have recourse against the manufacturer of the new component part." H.R No. 525(II). 103rd Cong., 2d Sess. P. 1647.

The Ninth Circuit Court of Appeals' opinion renders GARA's Rolling Provision powerless to protect general aviation accident victims in circumstances where an accident is caused by a replacement component, subassembly, system, or other part. A majority of today's general aviation aircraft were certified by the FAA more than eighteen years ago. These aircraft operate with components that were designed more than eighteen years ago and are subject to recurring replacement schedules. The Ninth Circuit's ruling will prohibit causes of action stemming from the failure of these replacement parts. GARA's Rolling Provision recognized that if a part mechanically operated for more than eighteen years it was legislatively deemed free of defect; however, if the part could not endure for eighteen years then it could arguably be defective. Nowhere in GARA's statutory language did Congress address the intangible concept of a design modification.

The Ninth Circuit's interpretation of GARA's Rolling Provision cannot function within the structure and clear language of the statute because the limitation period never begins with respect to the design concept. The GARA period of repose begins on the "date of delivery of the aircraft to its first purchaser or lessee", or "the date of delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft." 49 U.S.C. § 40101 note §§ 2(a)(1)(A),(B); *See also Lyons v. Agusta S.P.A.*, 252 F.3d 1078, 1084 (9th Cir. 2001) (GARA period of repose "runs from what amounts to the date of the first transfer from the manufacturer"). Therefore, the period of repose does not begin when a design concept is conceived and/or implemented. GARA's provisions track the age of the physical part and not the intangible design concepts associated with the parts.

In reaching its conclusion, the Ninth Circuit Court of Appeals gave undue weight to its opinion in *Caldwell v. Enstrom Helicopter, Corp*, 230 F.3d 1155 (9th Cir 2000). In *Caldwell* the Ninth Circuit determined that a revision to an aircraft flight manual fell within GARA's Section 2(a)(2) Rolling Provision. *Id.* at 1157. The plaintiff in *Caldwell* alleged that the aircraft accident at issue was caused by the flight manual's omission of a warning that the helicopter could not utilize the last two gallons of fuel in the tank. *Id.* at 1156. As a result, the pilot, believing there was at least two gallons of fuel remaining, crashed when the helicopter ran out of fuel ten miles from its destination. *Id.* Because the aircraft and its flight manual were originally sold more than eighteen years before the accident, the defendant moved for dismissal under GARA. *Id.*

The Ninth Circuit determined that the written flight manual was a part of the aircraft and that GARA 49 U.S.C. § 40101 note § 2(a)(2) could apply to the flight manual if it was reissued within the eighteen year limitation period. However, the Ninth Circuit held that the written words of the manual alleged to be the cause of the accident had to be modified or added to the manual to be considered a new replacement part to trigger the Rolling Provision.

Other cases involving re-issuance of written manuals and GARA's Rolling Provision also require a causal modification to written language. *See Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543, 553 (Iowa 2002) (re-issued maintenance manual did not implicate GARA § 2(a)(2) because there was no evidence that "Schweizer revised the manual . . . in any substantive fashion causally related to the crash in this case."); *Carolina Industries Productions, Inc. v. Learjet, Inc.*, 189 F.Supp.2d 1147, 1170-71 (D.Kan. 2001) (holding GARA did not start to run from the date maintenance manual was issued where there was no allegation that accident was caused by an alteration in the manual within eighteen years of the accident).

*Caldwell*'s and its progeny's requirement that a written manual's modification must cause an accident in order to implicate GARA's Rolling Provision does not apply to mechanical parts. A flight manual consists of conceptual information that can only be replaced by modification. A re-issued flight manual containing the same information is not a replacement of the old information contained in the previous manual.

The same logic cannot be applied to mechanical parts. In fact, the California Court of Appeals recognized this important distinction and held that GARA 49 U.S.C.

§ 40101 note. § 2(a)(2) does not include the concept of a design change. *See Hiser v. Bell Helicopter Textron, Inc.*, 111 Cal.App.4th 640, 4 Cal.Rptr.3d 249 (Cal. App. 2003). In *Hiser*, the plaintiff argued that the replacement parts created an entirely new design of the system. *Id.* at 649. In rejecting this argument the court stated: "the words 'component, system, subassembly, or other part,' without any modifiers or reference to 'design' connote the replacement of a physical item, i.e., a piece of hardware, and *not* a new intangible concept or design." *Id.* at 650 (emphasis added).

Here, the new trim actuator installed in the accident aircraft in 1998 was equipped with new jackscrews, with a new part number, a new dust shield, a new tie rod, new torque tubes, and modified jackscrew motors. (App. 58a-80a). Also, "due to the complexity of the problem" the owner had to ship the actuator back to the manufacturer to accomplish the Airworthiness Directive. (App. 68a-69a). The parts that were replaced in 1998 failed and caused the December 12, 1999 accident. The jackscrews have one job: to secure the trim actuator to the rod end adapters to ensure a connection between the horizontal stabilizers and the airframe. The jackscrews failed to do their job and disengaged from the rod end adapters. The tie rod has one job: to secure the jackscrews so they cannot unwind out of the rod end adapters. The tie rod failed to do its job because the jackscrews screwed out of the rod end adapters. The replaced parts failed and GARA does not prevent a cause of action based on this failure.

**GARA Protection Does Not Extend to Foreign Manufacturers**

GARA is a statute of repose which extinguishes a cause of action and should be strictly interpreted within its purpose which was to revitalize the United States general aviation industry. The purpose of GARA was to address a perceived "serious decline in the manufacturer and sale of general aviation aircraft by United States companies." H.R. Rep. No. 525(I) 103rd Cong., 2nd Sess. 1994, p. 1646. Congress, in discussing the decline of a general aviation aircraft manufacturing industry in the United States stated "the decline in manufacturing has also worsened our position in international trade." *Id.*

Congress' other concern was liability costs on U.S. manufacturers,

> *[m]oreover the liability problem has been a serious threat to the position of the United States Manufacturers versus their foreign competitors.* Foreign manufacturers are frequently able to take advantage of the less costly liability systems in their own country. Foreign manufacturers also have much less of a problem than U.S. manufacturers with regard to liability expenses for aircrafts previously sold in the United States in that they have not manufactured aircraft for as long as our U.S. counterparts. Consequently, they are not subject to the same sort of liability for an aircraft that had been operating for thirty, forty or fifty years. *These factors give foreign manufactures substantial costs advantage over United States companies and explain the substantial inroads in the U.S. market which foreign manufactures have made in recent years.*

*Id.* (emphasis added).

Congress intended the word *manufacturer* only to mean U.S. manufacturers. In fact, when the President signed the bill he stated "the result is legislation that accommodates the need to revitalize our general aviation industry, while preserving the legal rights of passengers and pilots." 1994 U.S.C.C.A.N. 1654. The President also stated "[GARA] will also help U.S. companies restore our nation to the status of the premier supplier of general aviation aircraft to the world, favorably affecting our balance of trade." *Id.*

IAI is a foreign manufacturer. (App. 88a-89a). Therefore, IAI does not fall within the group protected by GARA and IAI should not be entitled to receive GARA protection.

In support of its decision that GARA protects foreign manufactures of general aviation aircraft, the Ninth Circuit relied on *Lyons v. Agusta S.P.A.*, 252 F.3d 1078 (9th Cir. 2001) as a precedent where the court had afforded GARA protection to an Italian manufacturer. However, the litigants in *Lyons* did not raise the issue of whether GARA applies to foreign manufactures and the legal issue was not addressed by the court.

Accordingly, GARA's purpose of revitalizing the United States general aviation industry would be frustrated if the statute were used to revitalize the foreign competitors as well.

Respectfully submitted,

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**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SANDRA L. LAHAYE, individually and as personal representative of the Estate of Peter G. LaHaye,

Plaintiff-Appellant,

v.

GALVIN FLYING SERVICES, INC.,

Defendant,

and,

ISRAEL AIRCRAFT INDUSTRIES, LTD.,

Defendant-Appellee.

No. 04-35136

D.C. No. CV-01-00982-RSL

MEMORANDUM*

(Filed Aug. 9, 2005)

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, Chief District Judge, Presiding

Argued and Submitted July 15, 2005
Seattle, Washington

Before: TASHIMA, PAEZ, and CALLAHAN, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

This is an unintentional-tort case brought against a foreign aircraft manufacturer under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602-1611. The appellant, Sandra LaHaye, challenges the district court's determinations that: (1) she waived any right she may otherwise have had to a jury trial; (2) her design-defect claims against the appellee, Israel Aircraft Industries, Ltd., were barred by the statute of repose set forth in the General Aviation Revitalization Act of 1994 ("GARA"), 49 U.S.C. § 40101 note;[1] (3) she did not preserve an implementation claim for trial; and (4) she failed to show by a preponderance of the evidence that the alleged shortcomings in the appellee's maintenance instructions and drawings constituted the cause-in-fact for a pivotal device in the aircraft to fail and the plane to crash, resulting in the death of her husband. The appellant also asks us to take judicial notice of an undated preliminary report of another aircraft crash occurring long after the district court's entry of judgment in this case. The appellee moves to strike that report. We address each argument in turn.

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[1] In pertinent part, GARA's statute of repose provides,

> no civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as a manufacturer if the accident occurred –
>
> (1) after the applicable limitation period [18 years] beginning on –
>
> (A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or
>
> (B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft. . . .

49 U.S.C. § 40101 note, § 2(a)(1).

Because the parties are familiar with the facts of this case, we do not recite them here except as necessary to aid in the understanding of our disposition. We affirm the decisions of the district court because the appellant has failed to show reversible error.

**1.** We review a trial court's determination that a jury trial has been waived for an abuse of discretion. *Ticor Title Ins. Co. v. Florida*, 937 F.2d 447, 451-52 (9th Cir. 1991). The record shows that the appellant failed to comply with the procedures set forth in Federal Rule of Civil Procedure 38 by not demanding a jury trial for her claims against the appellee in a timely fashion and by failing to serve such a demand on the appellee. FED. R. CIV. P. 38(b); *Wall v. Nat'l R.R. Passenger Corp.*, 718 F.2d 906, 909 (9th Cir. 1983). Thus, the district court properly deemed the appellant's jury demand waived.[2]

**2.** The appellant challenges the district court's determination that her design-defect claims are barred by GARA's statute of repose. As the district court decided this issue on a motion for summary judgment, de novo review applies. *Estate of Kennedy v. Bell Helicopter Textron, Inc.*, 283 F.3d 1107, 1111 (9th Cir. 2002) (citing *Botosan v. Paul McNally Realty*, 216 F.3d 827, 830 (9th Cir. 2000)). We reject the appellant's contention that GARA's statute of repose does not apply to foreign manufacturers of general aviation aircraft. We do so based on our decision in *Lyon v. Agusta S.P.A.*, 252 F.3d 1078 (9th Cir. 2001), where we applied the statute of repose as barring an action against a

[2] Because we resolve the issue on waiver grounds, we need not consider the appellant's argument that the FSIA's provision that actions thereunder "shall be tried by court without jury," 28 U.S.C. § 1441(d), violates the Seventh Amendment.

foreign manufacturer without commenting that the defendant was a foreign entity, thus, implicitly holding that GARA's statute of repose applies to foreign manufacturers. *Id.* at 1088. Our decision here is further supported by the statute's definition of a "general aviation aircraft," which includes *any* aircraft for which the Federal Aviation Administration ("FAA") has issued a type certificate or airworthiness certificate, which includes the aircraft at issue in this litigation. 49 U.S.C. § 40101 note, § 2(c).

We agree with the district court that the recent overhaul of the trim actuator did not trigger GARA's rolling provision.[3] In *Caldwell v. Enstrom Helicopter Corp.*, 230 F.3d 1155 (9th Cir. 2000), we held that GARA's rolling provision applies where there has been a substantive alteration to the part that was alleged to have proximately caused the accident. *Id.* at 1158. Here, as the district court explained, the appellant alleged that "the design of the trim actuator was defective because it required a mechanic to place the dust cover over the assembly before inserting the tie rod through the jackscrew eyelets." The replacement of certain components of the trim actuator as a result of S.B. 136 did not change the allegedly defective aspect of the trim actuator's design. As the district court reasoned, because the allegedly defective aspect of the design had been in the marketplace for over eighteen years, it was barred by GARA's statute of repose.

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[3] GARA's rolling statute of repose applies to "any new component, system, subassembly, or other part which replaced another component, system, subassembly, or other part originally in, or which was added to, the aircraft, and which is alleged to have caused such death, injury, or damage, after the applicable limitation period beginning on the date of completion of the replacement or addition[.]" 49 U.S.C. § 40101 note, § 2(a)(2).

Moreover, the appellant fails to present facts that would invoke GARA's "knowing misrepresentation" exception.[4] Specifically, the appellant provides no evidence showing that the appellee knowingly or intentionally misrepresented information to the FAA in gaining certification for the subject aircraft.

**3.** Further, we agree with the district court that the appellant did not preserve an implementation claim for trial because she failed to raise it in either her complaint or trial brief, and it was not embraced within the joint pretrial order. *See* FED. R. CIV. P. 16(e). We note, moreover, that the district court did consider the evidence that she proffered in support of the purported implementation claim, and determined that the preponderance of the evidence did not support such a claim. Nothing presented in the record contradicts that ruling.

**4.** We review for clear error the district court's factual finding that the appellant failed to prove at trial that the alleged shortcomings in the appellee's maintenance instructions constituted the proximate cause of the plane crash. *Lentini v. Cal. Ctr. for the Arts, Escondido*, 370 F.3d 837, 843 (9th Cir. 2004). The district court's credibility findings are entitled to even greater deference. *Anderson v. Bessemer City*, 470 U.S. 564, 573-75 (1985).

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[4] A manufacturer is denied GARA immunity "if the claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer . . . knowingly misrepresented to the [FAA] or concealed or withheld from the [FAA], required information that is material and relevant to the performance or the maintenance or operation of such aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered[.]" 49 U.S.C. § 40101 note, § 2(b)(1).

Although the appellant made a compelling showing that the appellee's maintenance instructions, warnings, and drawings were in some instances erroneous or misleading, she also had to prove the element of proximate cause, which includes both cause in fact and legal causation. *Hiner v. Bridgestone/Firestone, Inc.*, 978 P.2d 505, 509 (Wash. 1999) (citing *Ayers v. Johnson & Johnson Baby Prods. Co.*, 818 P.2d 1337, 1340 (Wash. 1991)).[5] In its careful and thorough findings and conclusions, the district court correctly weighed all of the evidence presented at trial in determining that "it is more probable than not that [a third-party] mechanic [] disassembled the [trim] actuator and erroneously reassembled it without utilizing [the allegedly defective] instructions, manuals, and diagrams at his disposal." We uphold the trial court's decision because the record shows that its account of the evidence is plausible. *Anderson*, 470 U.S. at 573-74; *United States v. Working*, 224 F.3d 1093, 1102 (9th Cir. 2000) (en banc).

5. Finally, we deny the appellant's motion for judicial notice and grant the appellee's motion to strike the National Transportation Safety Board's preliminary report of an unrelated aircraft accident because it was not presented to the district court, is subject to reasonable dispute, and is irrelevant to the resolution of this appeal. FED. R. APP. P. 10(a); FED. R. EVID. 201(b); 9th Cir. R. 30-1.

Accordingly, the judgment of the district court is

**AFFIRMED.**

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[5] The parties agree that Washington law controls this case.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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|---|---|
| SANDRA L. LA HAYE,<br>Plaintiff,<br>v.<br>GALVIN FLYING SERVICE, INC., *et al*,<br>Defendants. | No. C01-0982L<br>ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT<br>(Filed May 2, 2003) |

This matter comes before the Court on defendant "IAI's Motion for Partial Summary Judgment re: Negligence, Breach of Warranty and Statute of Repose" Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact which would preclude summary judgment as a matter of law. Once the moving party has pointed out the absence of any triable issue of fact, he is entitled to summary judgment if the non-moving party fails to designate, by affidavits, depositions, answers to interrogatories, or admissions on file, "specific facts showing that there is a genuine Issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient" *Triton Energy Corp. v. of Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words, "summary judgment should be granted where the nonmoving party

fails to offer evidence from which a reasonable jury could return a verdict in its favor" *Triton Energy*, 68 F.3d at 1221.

For purposes of this motion, the relevant facts underlying plaintiffs claims are undisputed. On December 12, 1999, a Westwind 1124A aircraft manufactured by defendant Israel Aircraft Industries, Ltd ("IAI") crashed in Pennsylvania killing all aboard, including plaintiff's decedent. The aircraft was equipped with a trim actuator that was supposed to control the pitch of the aircraft's nose by adjusting the leading edge of the horizontal stabilizer. In order to work properly, the moving parts of the trim actuator, called jackscrews, were linked together by a tie rod that was inserted through a hole in the enclosing dust cover, through an eyelet at the top of each of the two jackscrews, and out the other side of the dust cover. Following the crash on December 12, 1999, the National Transportation Safety Board ("NTSB") concluded that the tie rod had been incorrectly inserted above the jackscrew eyelets, which allowed the jackscrews to unwind and left the horizontal stabilizer free to flap up and down in the wind. As a result, the pilots of the Westwind 1124A lost control of the aircraft and, after a series of gyrations, the plane crashed.

Plaintiff asserts that the design of the trim actuator was faulty because (1) a mechanic had to place the dust cover over the mechanism before inserting the tie rod, making it very difficult to tell whether the tie rod had passed tough the jackscrew eyelets and (2) there should have been an external mechanical stop on the aircraft's frame to limit the movement of the horizontal stabilizer in the event the trim actuator failed. Plaintiff maintains that IAI knew that these design flaws could result in the loss of

an aircraft and yet failed to inform the Federal Aviation Administration ("FAA") and/or take corrective measures. Plaintiff also asserts that the maintenance manuals issued by IAI with regards to the trim actuator were incorrect and contributed to the loss of the Westwind 1124A[1]

Defendant seeks dismissal of plaintiffs' negligence and breach of warranty claims on the ground that they are preempted by the Washington Products Liability Act ("WPLA"), RCW 7.72 *et seq.* Defendant relies on the 18 year statute of repose provided by the General Aviation Revitalization Act ("GARA"), 49 U.S.C. § 40101 note, to dispose of plaintiff's defective design and failure to warn claims.

**A. Washington Products Liability Act, ("WPLA"), RCW 7.72 *et seq.***

Although plaintiff acknowledges that, in the products liability context, the WPLA consolidated common law theories such as negligence and breach of warranty into a single statutory cause of action, she resists dismissal on the ground that such common law theories are an Integral part of the WPLA's remedial scheme. Washington courts have consistently held that the WPLA not only creates a single cause of action encompassing all of the previous theories of product liability, but actually preempts the common law remedies in favor of the unified statutory scheme. *See, e.g., Washington State Physicians Ins Exch. v. Fisons Corp.*, 122 Wn.2d 299, 322 (1993); *Washington Water Power Co. v Graybar Elec. Co.*, 112 Wn.2d 847, 853

[1] Defendant seeks to resolve this last claim in a separate motion for summary judgment.

(1989). Dismissing causes of action that have been pre-empted by statute serves to limit the fact finder's consideration to those issues which are relevant under the applicable law. Because the old common law product liability analyses and damage calculations cannot be substituted or relied upon as a fall back position if plaintiff is ultimately unable to prove the statutory elements of her WPLA claim, the common law claims must be dismissed at this time Defendant's motion for summary judgment is therefore granted as to plaintiffs negligence and breach of warranty claims.

**B. General Aviation Revitalization Act ("GARA"), 49 U.S.C. § 40101 note**

In the early 1990's, Congress became concerned that the never-ending threat of liability based on alleged design and manufacturing defects was contributing to a steep and potentially fatal decline in the general aviation industry. "In an effort to 'revitalize' the general aviation industry, Congress passed (and the President signed on August 17, 1994) a statute of repose that protects general aviation manufacturers from the uncertainties and costs associated with 'long tail' liability." *Rickert v. Mitsubishi Heavy Indus., Ltd.*, 923 F. Supp. 1453, 1454 (D. Wyo. 1996). GARA shields aircraft and component part manufacturers from claims that arise more than 18 years after the aircraft was first sold. "The 18-year period begins anew if the death, injury, or damage is caused by any 'new component, system, subassembly, or other part which replace another component, system, subassembly, or other party originally in, or which was added to, the aircraft' " *Caldwell v. Enstrom Helicopter Corp.*, 230 F. 3d 1155, 1156 (2000) (quoting GARA § 2(a)(2)).

It is undisputed that the Westwind 1124A at issue in this litigation was delivered to its first purchaser more than 18 years before the December 12, 1999, crash Plaintiff argues that GARA's statute of repose does not defeat her claim, however, because (1) GARA protects only U.S. manufacturers, (2) IAI is not the "manufacturer" in this case because a third-party designed and manufactured the trim actuator, (3) the trim actuator that failed was installed in 1998, restarting the 18-year period, and (4) IAI's concealment of required information from the FAA strips it of the protections offered by GARA. Each of these contentions is considered below.

**(1) Applicability of GARA to Foreign Manufacturers**

Plaintiff argues, with some support, that Congress enacted GARA to counteract certain perceived inequities in the liability schemes facing U.S. and foreign manufacturers. Plaintiff then leaps to the conclusion that GARA's statute of repose applies only to U.S. manufacturers. Nothing in the legislative history or the statute supports this argument. Congress was obviously concerned about the health of the U.S. general aviation industry and felt that foreign manufacturers were unfairly benefitting from favorable liability schemes in their home countries and/or the newness of their aircraft compared with the older U.S. products. These perceived imbalances could be counteracted in either of two ways by passing Legislation designed to level the playing field for all general aviation manufacturers or by providing a special benefit to U.S. manufacturers. The language of the statute is clearly broad enough to cover all aircraft manufacturers and does not indicate any preference for U.S. manufacturers over

foreign manufacturers. Those who benefit from GARA's statute of repose are "manufacturers" of "general aviation aircraft" or their component parts. A "general aviation aircraft" is defined to include any aircraft for which the FAA has issued a type certificate or an airworthiness certificate. The Westwind 1124A at issue in this litigation is a "general aviation aircraft" as defined in GARA. its manufacturer, IAI, Is therefore entitled to claim the protections of the statute[2]

**(2) IAI as the "Manufacturer"**

GARA's repose period cuts off suits filed against the "manufacturer of the aircraft" or "die manufacturer of any new component, system, subassembly, or other part of the aircraft . . . " Plaintiff has sued defendant IAI for its activities as the manufacturer of the aircraft into which the allegedly defective trim actuator was incorporated. As such, IAI may claim the protections afforded by GARA.

**(3) Roiling Statute of Repose**

As discussed above, Congress enacted an 18-year statute of repose to shield the manufacturers of general aviation aircraft and their component parts from lawsuits arising many years after the allegedly defective part was first put into service. Congress "believed that manufacturers

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[2] It should also be noted that the Ninth Circuit has applied GARA in a case involving a foreign manufacturer. Although defendants' status as instrumentalities of the Republic of Italy was discussed as part of the jurisdictional analysis, neither defendants nor the Ninth Circuit expressed any doubt regarding the applicability of GARA to foreign manufacturers *Lyon v Agusta S.P.A.*, 252 F. 3d 1078. 1084 (9th Cir. 2001).

were being driven to the wall because, among other things, of the long tail of liability attached to those aircraft, which could be used for decades after they were first manufactured and sold." *Lyon v. Agusta*, 252 F.3d 1078, 1084 (2001). To remedy this problem, any lawsuit claiming a defect in design or manufacture in a product that had already proved its usefulness for almost two decades was barred. If, however, a "new component, system, subassembly, or other part" is incorporated into the aircraft, the 18-year period associated with the new part begins to run on the date of its installation. GARA § 2(a)(2).

Following the receipt of reports of broken tie rods in 1992 and 1996, IAI worked with the manufacturer of the trim actuator and decided that the whole assembly should be inspected and overhauled. Decl. of Halma "Ilana" Podlovsky (filed 2/6/03), Ex. V; Decl. of Keith D. Petrak (filed 2/6/03), Ex. G. As part of the overhaul, a new tie rod made of a stronger material was installed, the threads on the jackscrews were modified to lessen the stress on the tie rod, and steel sleeves were placed on the outside of the dust covers (apparently to prevent the tie rod from deforming the holes) Decl. of Bradley J. Stoll (filed 2/24/03), Ex. J at 25-27 and Ex. M. Plaintiff maintains that the overhaul of the trim actuator restarted the 18-year repose period for purposes of this litigation Under plaintiff's theory of the case, the trim actuator is a "new component," the failure of which caused the December 12, 1999, crash. Since the "new component" was installed less than 18 years before the crash and is alleged to have caused the death and damages of which plaintiff complains, plaintiff argues that this lawsuit is not barred by the statute of repose. Although the overhaul involved the replacement of certain specified parts within the trim actuator, plaintiff takes a

broad view of the procedure, asserting that the entire component was "new" and was causally related to the crash.

Defendant, on the other hand, takes a narrow view, focusing on the exact parts that were replaced in 1998 and noting that plaintiff has not alleged any defect in the design or manufacture of the new parts. Rather, plaintiff's claims depend on an alleged design defect that existed at the time the aircraft was first manufactured and which was unchanged by the 1998 overhaul. Under this analysis, the critical allegation, that the new parts caused the death and damages for which plaintiff seeks to recover is missing, making GARA's rolling provision inapplicable.

Congress' alternative use of the terms "component," "system," "subassembly," and "part" offers little guidance to a reviewing court when determining the impact of a particular repair or alteration on GARA's rolling provision. Plaintiff likes the broader term "component" and argues that the replacement and modification of multiple parts in the trim actuator should be considered a replacement of the actuator itself. Defendant, on the other hand, focuses on the individual parts that were replaced and argues against any broader view of the overhaul. Having reviewed the language of the statute, its legislative history, and the relevant case law, the Court believes that an alteration which comfortably fits within one of the terms listed in the statute should not be expanded to include the broader categories. For example, repairing or replacing a particular part, such as a fuel gauge, should not restart the repose period for the entire instrument panel or fuel system, even though the gauge could be considered part of that subassembly and/or system. The "part" that was replaced was the gauge: if the aircraft crashed because the

pilot was unable to determine the amount of fuel in the tank, GARA should preserve any related causes of action until 18 years after the new gauge was installed. Congress' intent to provide repose for aircraft manufacturers could be effectively nullified, however, if plaintiffs could lump each new part into larger systems for purposes of GARA's rolling provision. If that were the case, parts that were manufactured at the time of the original sale and whose design had proved useful and safe over the years could become the basis of a suit decades later, not because they were new or had been altered in the last 18 years, but because another part in the same system had been replaced.

This analysis is consistent with the Ninth Circuit's holding in *Caldwell*, 230 F.3d at 1158, where the Circuit Court required a substantive alteration to the part that was alleged to have proximately caused the accident in order to avoid GARA's bar. In that case, plaintiffs alleged that the flight manual for the ill-fated aircraft was defective because it failed to warn that the last two gallons of fuel in the fuel tank could not be used. Plaintiffs also alleged that the manufacturer had revised the aircraft's flight manual several times within the last 18 years. In order to avoid GARA's statutory bar, plaintiff argued that the flight manual was a "part" of the general aviation aircraft product, the revision of which restarted GARA's 18-year repose period. The Ninth Circuit agreed, but noted that:

> A revision to the manual does not implicate GARA's rolling provision . . . unless the revised part "is alleged to have caused [the] death, injury, or damage." GARA § 2(a)(2). Just as the installation of a new rotor blade does not start the

> 18-year period of repose anew for purposes of an action for damages due to a faulty fuel system, a revision to any part of the manual except that which describes the fuel system would be irrelevant here. Furthermore, mere cosmetic changes (like changing the manual's typeface) do not revive the statute of repose. In sum, if Defendant substantively altered, or deleted, a warning about the fuel system from the manual within the last 18 years, and it is alleged that the revision or omission is the proximate cause of the accident, then GARA does not bar the action.

*Caldwell*, 230 F.3d at 1158.

In the case at hand, plaintiff alleges that the design of the trim actuator was defective because it required the mechanic to place the dust cover over the assembly before inserting the tie rod through the jackscrew eyelets. The modifications engendered by the discovery of shorn tie rods did not change this aspect of the design. The parts that were newly designed and manufactured, such as the tie rod and the jackscrews, did not fail and are not alleged to have caused the 1999 crash. In these circumstances, the Court finds that, because the allegedly defective design of the trim actuator had been in the marketplace for more than 18 years and had undergone no substantive alteration, all claims arising out of the alleged defect are barred by GARA's statute of repose.

Plaintiff has alleged that the Westwind 1124A was defective because it lacked an external mechanical stop on the aircraft's frame to limit the movement of the horizontal stabilizer in the event the trim actuator failed. Plaintiff has not identified any repair or modification related to this alleged design flaw which could have restarted the statute

of repose. The Court finds, therefore, that GARA's rolling provision does not save plaintiff's claims.

**(4) Knowingly Misrepresenting or Concealing Required Information from the FAA**

GARA's period of repose does not apply:

> if the claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer with respect to a type certificate or airworthiness certificate for, or obligations with respect to continuing airworthiness of, an aircraft or a component, system, subassembly, or other part of an aircraft knowingly misrepresented to the Federal Aviation Administration, or concealed or withheld from the Federal Aviation Administration, required information that is material and relevant to the performance of the maintenance or operation of such aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered.

GARA § 2(b)(1). As discussed in *Caldwell*, this provision is "a means of withdrawing GARA's protection from an intentional wrongdoer." 230 F.3d at 1158 n. 4. Plaintiff maintains that IAI concealed three types of information from the FAA, triggering the exception. First, plaintiff asserts that defendant concealed the fact that the failure of the tie rod (either through mechanic error or breakage) could not be counteracted by the pilot in violation of 14 C.F.R. § 25.672(b). Second, plaintiff maintains that defendant misled the FAA into believing that the Westwind 1124A complied with Civil Air Regulation ("CAR") § 4b.312(b), which required that the manufacturer provide

"stops" to ensure that the travel of an adjustable stabilizer is limited to an acceptable range even if the mechanism that adjusts the stabilizer fails. Finally, plaintiff argues that, in violation of 14 C.F.R. § 21.3, IAI concealed information regarding the discovery of broken tie rods in 1992 and 1996.

The only case in which the "misrepresentation" exception to GARA has been applied is *Rickert v. Mitsubishi Heavy Indus, Ltd.*, 923 F. Supp. 1453 (D. Wyo. 1996), and its sequel at 929 F. Supp. 380 (D. Wyo. 1996). After reviewing the statutory language, the District Court of Wyoming found that, in the summary judgment context, "GARA's 'knowing misrepresentation' exception requires the parties to prove the absence or presence of a genuine issue of material fact concerning, (1) knowledge, (2) misrepresentation, concealment, or withholding of required information to the FAA; (3) materiality; and (4) causal relationship between the harm and the accident." 923 F. Supp. at 1456. In the first reported opinion, the court considered whether the production of expert reports asserting design defects and letters showing that defendant had been apprized of what would later be identified as the cause of a number of accidents raised a triable issue of fact regarding a knowing misrepresentation or concealment. The district court was willing to assume that plaintiff's expert was correct, that the design of the aircraft was defective, and that, with respect to the design and performance of the aircraft, the manufacturer had been "obstinant [sic], short-sighted, negligent, and perhaps reckless." 923 F Supp. at 1461. Nevertheless, the court found that plaintiff's evidence, which would have been appropriate for a negligence or strict liability claim, did not rise to the level of a knowing misrepresentation or a

knowing concealment. The differences of expert opinion regarding design issues and the discussions with critics regarding possible design flaws did not raise an inference that the manufacturer made knowingly false statements to, or intentionally hid information from, the FAA.

Following the initial, grant of summary judgment, Rickert was permitted to conduct additional discovery and was able to obtain affidavits from two of defendant's former employees in which they asserted that they were aware of numerous crashes involving the subject aircraft and that defendant's employees had a theory regarding the cause of those crashes. The district court found the internal musings of employees irrelevant to the issue of a knowing misrepresentation or concealment, but was persuaded by the employees' testimony that defendant failed to disclose the perceived problem to the FAA, took steps to conceal the information from the FAA, and intentionally misdirected tests so that it could report favorable results without notifying the FAA of known shortcomings. 929 F. Supp. at 382.

Ultimately, the district court concluded that the fact that various experts, employees, and/or customers think that an aircraft should have been designed differently or that the manufacturer should fix the alleged defects does not show a knowing misrepresentation to or knowing concealment from the FAA. As in this case, Rickert relied on 14 C.F.R. § 21.3, arguing that the regulation imposed a duty on manufacturers to disclose all known criticisms and differences of opinion to the FAA. The district court disagreed, noting:

> This regulation cannot and does not require aircraft manufacturers to notify the FAA everytime [sic] that an engineer, a pilot, or a civilian writes

> that a particular aircraft should have been designed differently or that it is flawed. Were that the rule, aircraft manufacturers would spend most of their time reporting to the FAA and the FAA would be buried in reports noting differences of opinion concerning aircraft design and aircraft failure.
>
> More importantly, Rickert's understanding of [the manufacturer's] obligations under FAR § 21.3 would effectively gut GARA. If this regulation required aircraft manufacturers to report all differences of opinion, then the failure to report these differences of opinion would constitute a "withholding." This "withholding," in turn, would satisfy one of GARA's exceptions and allow parties to bring suits 20, 30, or 40 years after the manufacture of an aircraft, provided only that: (1) the party produced an article, a letter, or a report stating that the aircraft had been poorly or incorrectly designed or manufactured; and (2) the party showed that the manufacturer had not reported the article's, letter's, or report's contentions to the FAA. That as not the law, and neither GARA nor FAR § 21.3 produce such an absurd result.

929 F. Supp. at 384-45.

The Court agrees with and adopts the District Court of Wyoming's interpretation of GARA § 2(b)(1) and 14 C.F.R. § 21.3. Section 21.3 imposes a duty to report any defect that the manufacturer "determines could result in" one of the listed failures. There is no evidence that IAI ever determined that a broken or misplaced tie rod could cause the trim actuator to disengage from the horizontal stabilizer. At most, the evidence produced by plaintiff shows that a customer was concerned that a tie rod failure

could cause the jackscrews to unwind and, following receipt of the report, IAI considered the possibility. Decl of Halma "Ilana" Podlovsky (filed 2/6/03), Exs. C and J. In the two instances where the tie rod actually failed, the jackscrews apparently did not unwind, and IAI's own evaluation of the problem convinced it that the most likely scenario would be that the jackscrews would jam. Decl. of Halma "Ilana" Podlovsky (filed 2/6/03), Exs. E and M. This evidence simply does not give rise to an inference of knowing misrepresentation or knowing concealment of information that was required under 14 C.F.R. § 21.3.

Plaintiff's claims that IAI misled the FAA during the certification process are equally unavailing. "Misleading," a term which focuses on the effect of a misstatement on the hearer, is not identified as one of the wrongs that can strip a manufacturer of the protections of GARA. Rather, plaintiff has the burden of showing that the manufacturer made knowing misrepresentations to, or concealed or withheld required information from, the FAA. The fact that the FAA may have been "mislead," *i.e.*, believed something that was not true, is not the test: plaintiff has to show that defendant made knowingly false statements or intentionally concealed relevant facts which contributed to the FAA's misunderstanding. Plaintiff asserts that representations in the Type Certificate Data Sheet for the predecessor of the Westwind 1124A were incorrect. Decl. of Bradley J. Stoll (filed 2/24/03), Ex. C at 3. In particular, plaintiff takes issue with IAI's assertions that the aircraft complies with 14 C.F.R. § 25.672 and CAR 4b.312(b).[3]

[3] The "Certification basis" section of the Type Certificate Data Sheet does not mention 14 C.F.R. § 25.672. The Court has assumed, for

(Continued on following page)

Plaintiff offers evidence that, given that the failure of the tie rod could disengage the trim actuator from the horizontal stabilizer, the Westwind 1124A's trim actuator could be considered a single point failure and IAI should have provided external stops on the actuator itself or on the airframe. Decl. of Roger Schaufele (filed 2/24/03), at ¶¶ 3 and 7. As discussed above, however, there is no evidence that IAI believed that a tie rod failure would cause the jackscrews to unwind even if the Court assumes IAI was wrong and plaintiff's expert is right, the evidence does not give rise to an inference of knowing misrepresentation or concealment Rather, IAI's assertions that the aircraft complied with 14 C.F.R. § 25.672 and CAR 4b.312(b) were based on engineering probabilities and assumptions that turned out to be wrong. There is no evidence that IAI believed that a broken tie rod would do anything other than jam the horizontal stabilizer, a condition plaintiff acknowledges need not have been tested under § 25.672. With regards to the CAR 4b.312(b) claim, the stops IAI provided on the Westwind 1124A may ultimately have proven to be insufficient, but there is no evidence from which one could conclude that IAI knew its design did not comply with the applicable regulations at the time the representations were made.

Plaintiff cannot defeat the protections of GARA by identifying a design defect, alleging that the manufacturer was or should have been aware of the defect, and claiming a knowing misrepresentation or intentional concealment. Plaintiff's case relies almost exclusively on the conclusions of her experts, which prove nothing more than that there

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purposes of this motion, that one of the regulations cited in the Data Sheet was subsequently renumbered as § 25.672.

is a difference of opinion regarding design issues. Plaintiff's evidence, which might have been enough to raise an inference of negligence, is simply insufficient to create a genuine issue of fact regarding the applicability of the § 2(b)(1) exceptions.

For all of the foregoing reasons, plaintiff's negligence and breach of warranty claims are DISMISSED with prejudice. Defendant's motion for summary judgment based on GARA's statute of repose is GRANTED.

DATED this 2nd day of May, 2003.

/s/ Robert S. Lasnik
Robert S. Lasnik
United States
District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| SANDRA L. LA HAYE<br>Plaintiff,<br>v.<br>GALVIN FLYING SERVICE, INC., *et al.*,<br>Defendants. | No. C01-0982L<br>ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT RE POST-DELIVERY PUBLICATION CLAIMS<br>(Filed May 2, 2003) |

This matter comes before the Court on defendant "IAI's Motion for Partial Summary Judgment re: Post-Delivery Publication, Claims "Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact which would preclude summary judgment as a matter of law. Once the moving party has pointed out the absence of any triable issue of fact, he's entitled to summary judgment if the non-moving party fails to designate, by affidavits, depositions, answers to Interrogatories, or admissions on file, "specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient." *Triton Energy Corp. v. Square D Co.*, 68 F 3d 1216, 1221 (9th Cir. 1995). Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment *Anderson v Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) In other words, "summary judgment should be granted where the nonmoving party

fails to offer evidence from which a reasonable jury could return a verdict in its favor" *Triton Energy*, 68 F.3d at 1221.

Citing *Hiner v. Bridgestone/Firestone, Inc*, 138 Wn.2d 248, 256 (1999), defendant argues that plaintiff is unable to prove that the alleged defects in IAI's manual and service bulletins were the proximate cause of the December 12, 1999, crash of the Westwind 1124A aircraft in which plaintiffs decedent was traveling. In *Hiner*, the owner of an automobile sued the tire manufacturer for an alleged failure to warn that installing studded snow tires on only the front wheels of the vehicle was unsafe. Similar warnings were, however, included in the vehicle's owners manual. In light of plaintiff's testimony that she had not read her owners manual and had not looked for, and therefore would not have seen, any warnings that might have been on the tires before they were installed, the court directed a verdict in defendant's favor on the ground that plaintiff could not prove causation

Unlike the situation in Hiner, where plaintiff's "bare assertion" of reliance was disproved by her actual conduct, there is evidence from which the fact finder could conclude that the mechanics working on the Westwind 1124A did, in fact, review the applicable manuals and sought guidance from IAI's publications when inspecting the trim actuator. Although the testimony of Gowin and Coates is sketchy on some points, they testified that Gavin employees had access to the updated maintenance manuals and service bulletins for the Westwind 1124A, that it was the normal procedure to utilize these documents when conducting inspections and repairs, and that Gowin printed off the pages of the manual that discussed the trim actuator before working on the Westwind 1124A. This evidence is

sufficient to raise an inference of reliance and causation, even though the witnesses were unable to remember, at the time of their depositions, which particular documents they had reviewed three years earlier.

For all of the foregoing reasons, defendant's motion for summary judgment regarding the post-delivery publications is DENIED.

DATED this 2nd day of May, 2003.

/s/ Robert S. Lasnik
Robert S. Lasnik
United States
District Judge

**United States District Court**
WESTERN DISTRICT OF WASHINGTON

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| SANDRA L. LA HAYE, | JUDGMENT IN A CIVIL CASE |
| v. | (Filed Sep. 24, 2003) |
| GALVIN FLYING SERVICE, INC., et al. | CASE NUMBER: C01-982L |

____ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__x__ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

The Court finds in favor of defendant IAI and against plaintiff.

September 24, 2003

BRUCE RIFKIN
Clerk

/s/ Kerry Lane
By Kerry Lane, Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| SANDRA L. LA HAYE<br><br>Plaintiff,<br><br>v.<br><br>GALVIN FLYING SERVICE, INC., *et al.*,<br><br>Defendants. | No. C01-0982L<br><br>MEMORANDUM OF DECISION |

This matter was heard by the Court in a bench trial commencing on September 8, 2003, and concluding on September 15, 2003. Plaintiff Sandra La Haye; the wife of decedent Peter La Haye, Sr., alleges that defendant Israel Aircraft Industries, Ltd. ("IAI") provided maintenance instructions and drawings for the ill-fated Westwind 1124A aircraft that were "not reasonably safe" as that phrase is used in Washington's Product Liability Act, RCW 7.72 *et seq.* This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1330 and the definition of "foreign state" provided in the Foreign Sovereign Immunities Act, 28 U.S.C. § 1603.

Plaintiff alleges, and has the burden of proving by a preponderance of the evidence, that (1) the IAI Westwind 1124A maintenance manual and Service Bulletin 1124-27-133 ("SB 133") were not reasonably safe as designed; (2) the defective maintenance instructions rendered the accident aircraft and the maintenance manual unreasonably unsafe; and (3) IAI negligently failed to provide correct and adequate instructions and warnings to the users of the Westwind 1124A aircraft. Plaintiff's Trial Brief at 6-9.

Plaintiff also has the burden of proving that one or more of the above-described deficiencies was the proximate cause of the crash of Peter La Haye's aircraft. "Proximate causation includes both cause in fact and legal causation. Cause in fact refers to the 'but for' consequences of an act – the physical connection between an act and an injury." *Hiner v. Bridgestone/Firestone, Inc.*, 138 Wn.2d 248, 256 (1999). The Court has considered the evidence presented at trial, the exhibits admitted into evidence, the arguments of counsel and, being fully advised, finds as follows:

Plaintiff has presented a compelling case that the maintenance instructions, warnings, and drawings provided by IAI were in some cases erroneous and in several instances misleading. Nevertheless, the Court has chosen to focus primarily on the second element of plaintiff's case, namely causation. The issue is whether plaintiff proved by a preponderance of the evidence that any shortcomings in the IAI instructions and diagrams was the reason in fact that the actuator on N50PL was misassembled, causing the tragic crash of December 12, 1999. Despite the fact that causation was identified as a significant issue during pretrial motion practice, the evidence presented at trial regarding causation is limited and consists primarily of the testimony and statements of the Galvin Flying Services mechanic, David Gowin, and his supervisor, James Coates.

At trial, Gowin testified[1] that his job was to ensure that N50PL complied with Airworthiness Directive ("AD")

[1] Although there is no official transcript of the trial proceedings, references to trial testimony are based on the Court's trial notes and an unofficial transcript provided by the court reporter.

98-20-35 (Court's Exhibit 49). In order to do that, Gowin testified that he used a flashlight and mirror to search for a part or serial number on the horizontal stabilizer trim actuator, but did not actually conduct any part of the inspection set forth in SB 133 (Court's Exhibit 46) or otherwise touch a wrench to the actuator. This testimony is not credible in light of the other evidence in the case. It is undisputed that the actuator was incorrectly assembled at the time of the crash: not only was the dust shield down, but the tie rod had been inserted above, rather than through, the jackscrews. There is no indication in the record that anyone other than Gowin worked on the actuator just before the fatal accident, nor is there evidence that the aircraft had been flying with an improperly assembled actuator since it was last serviced. Having considered all of the evidence on this point, including Gowin's manner while testifying and his conflicting statements regarding how much time he spent working on the trim actuator[2] and what he saw when he looked at the actuator,[3] the Court concludes that Gowin's trial testimony

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[2] At trial, Gowin testified that it took him approximately thirty minutes to review the AD, extend the stabilizer, attempt to locate the data tag on the actuator, and inquire regarding the availability of a replacement actuator. On the time card he completed in connection with the December 1999 inspection, however, Gowin reported that he spent three and a half hours working on the Westwind 1124A actuator. The recorded time is consistent with the manufacturer's estimate of how long it would take to inspect the actuator, including its disassembly and reassembly. *See* Court's Exhibits 46 and 520.

[3] The Court has not considered Gowin's May 4th or May 24th statements to Federal Aviation Administration ("FAA") investigator Brent Morrow for the truth of the matters asserted. Nevertheless, the testimony of Morrow is admissible to show that Gowin made conflicting statements to the FAA investigator regarding an important matter, thereby further damaging his credibility.

is simply not credible and that he did, in fact, take the actuator apart in December 1999.

While this finding does not resolve the causation issue in this case, the fact that Gowin's testimony is not credible in one respect clearly impacts the Court's evaluation of the remainder of his testimony. Plaintiff was able to elicit testimony from Gowin that he relied on the drawings contained in SB 133 to determine whether the actuator in N50PL was properly assembled. The Court rejects this testimony as not credible for a number of reasons. First, it is extremely difficult to believe this witness in one area where the Court feels he is not telling the truth in another, related area. Second, Gowin's testimony on this issue has not been consistent. At some points in both his deposition and his trial testimony, Gowin seemed to say that, because his task was limited to complying with AD 98-05-09, he did not look at or rely upon SB 133 when working on N50PL. At other points, Gowin could not recall what he had or had not seen in December 1999, although he was fairly certain that he had the service bulletin and the drawings available to him if he needed them.[4] At trial, Gowin testified that plaintiff's litigation team had helped refresh his recollection of an event he had consistently professed to

[4] For summary judgment purposes, where the Court interpreted the evidence in the light most favorable to plaintiff and drew all inferences in her favor, evidence showing that (1) a trained mechanic had access to the maintenance manual, service bulletin, and related illustrations and (2) it was normal procedure to utilize these documents when working on the trim actuator was sufficient to raise an inference of reliance and causation. However, now that the Court is required to weigh the credibility of witnesses and plaintiff has the burden of proving the elements of her claim by a preponderance of the evidence, these facts alone are not sufficient to establish either reliance or causation in this lawsuit.

have very little memory of in his deposition and in his remarks to the FAA investigator. In such circumstances, Gowin's answers to certain leading questions by plaintiff's counsel are of very little value.

Finally, Gowin's credibility has been compromised by events which have left the Court with the firm conviction that Gowin is biased. At some point during the months before trial, Gowin was given an opportunity to purge himself of the guilt he has been carrying since N50PL crashed on December 12, 1999. Rick La Haye, the victim's son and himself an airplane mechanic, contacted Gowin and told him that the accident was not his fault, that the family does not blame him for the crash, and that Gowin was also a victim. By presenting Gowin with evidence that the real culprit in this matter is IAI because it failed to include a simple measurement in the diagram that could have prevented the misassembly of the actuator, Rick La Haye not only gave Gowin an opportunity to escape the crushing guilt and stigma associated with having caused the deaths of three individuals, but also provided a chance to help the La Haye family win this lawsuit. Although Rick La Haye's contact with Gowin was apparently motivated by his conviction that Gowin was unfairly suffering the consequence of defendant's malfeasance, it had the evidentiary effect of giving Gowin a bias and prejudice against IAI and a strong interest in obtaining a verdict that both helps the La Haye family and vindicates him by placing the blame elsewhere. Such a combination of events and circumstances severely damages Gowin's credibility on this crucial point.

Applying the factors identified in 9th Cir. Civ. Jury Instr. 3.6 (2001) on the credibility of witnesses, Gowin's inconsistent memory, his manner while testifying, his

interest in the outcome of the case and his bias in favor of plaintiff, the other contradictory evidence, and the unreasonableness of his version of events in light of the surrounding evidence all lead the Court to the conclusion that Gowin's testimony that he compared the drawing in SB 133 to the actuator in N50PL when determining whether to release the aircraft is not credible. The only other evidence directly bearing on the causation issue is the deposition testimony of James Coates. Although Coates was the inspector at Galvin Flying Services who was tasked with reviewing Gowin's work on N50PL, he testified, "I don't have a memory of inspecting [Gowin's] work because that's not really how it went . . . I wasn't looking for work that wasn't done. He didn't do anything. So I didn't look at specific work. I did a cursory inspection." Dep. Tr. at 18, 11.12-16. Gowin had apparently told Coates that no work had been performed on the trim actuator, so Coates felt that his inspection obligations were limited: "I wanted to make sure that we didn't – there was nothing in there that was going to be in the way of that horizontal stab moving around . . . Did we leave a flashlight in there?" Dep. Tr. at 20, 11.12-21. Coates confirms that as soon as Galvin Flying Services heard about the crash of N50PL, they held a special session to go over everything that had been done on the plane. Even at that point in time, when memories should have been fresh and heightened by the tragedy that had just occurred, nobody seems to say anything about the actuator and Coates' vague memory of the meeting does not shed any light on the causation issue. The Court concludes that neither Coates' testimony nor his involvement in the work performed on N50PL can establish causation in this case. Coates did nothing but take a cursory look inside the tail section to make sure Gowin had not left a flashlight inside that could

hinder the movement of the horizontal stabilizer. Based on what Gowin told him, he believed no work had been done on the actuator and had no reason to look more closely. Coates has no personal knowledge regarding what documents or information Gowin relied upon when working on the actuator. Even if the Court assumes that he failed to meet industry standards when he inspected Gowin's work, his failure to see that the actuator was misassembled had absolutely nothing to do with the deficiencies in IAI's manuals, instructions, and illustrations.

For all of the foregoing reasons, the Court concludes that it is more probable than not that mechanic Gowin disassembled the actuator and erroneously reassembled it without utilizing the instructions, manuals, and diagrams at his disposal. Having considered all of the evidence presented at trial, the Court cannot presume that, just because IAI's documents were available to him, Gowin actually reviewed the instructions, manuals, and diagrams or otherwise relied on them when reassembling the actuator on the N50PL. Such presumptions may have been sufficient to ward off summary judgment, but where the evidence shows that Gowin has altered his testimony on critical points and has a personal interest in the outcome of this case, his sudden conviction at trial that he used IAI's diagram to verify that the actuator was properly assembled does not establish causation by a preponderance of the evidence.

The Court need not determine whether the instructions, warnings, and illustrations provided by IAI were adequate because plaintiff has failed to meet her burden of demonstrating cause in fact. Given the outcome on liability, the Court also need not address the extent of compensable damages in this case. On several occasions

during the trial, the Court commented upon what a remarkable man Peter La Haye, Sr., was. His tragic death created a unique question as to how to calculate plaintiff's economic damages, given Mr. La Haye's extraordinary talents for developing innovative and worthwhile products and for inspiring people and companies to achieve success. This very difficult calculation need not be attempted in light of the above findings.

The Clerk of Court is directed to enter judgment in favor of defendant IAI and against plaintiff.

DATED this 24th day of September, 2003.

/s/ Robert S. Lasnik
Robert S. Lasnik
United States
District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| SANDRA L. LA HAYE<br>Plaintiff,<br>v.<br>GALVIN FLYING SERVICE, INC., *et al.*,<br>Defendants. | No. C01-0982L<br>ORDER DENYING PLAINTIFF'S MOTION FOR POST-TRIAL RELIEF<br>(Filed Jan. 22, 2004) |

This matter comes before the Court on "Plaintiff's Motion for Post Trial Relief pursuant to F. R. Civ. P. 59." Plaintiff argues the judgment in the above-captioned matter should be reversed and/or a new trial granted for the following reasons:

(1) the Court erred when it determined that plaintiff was not entitled to a jury trial;

(2) the Court erred when it determined that the mineral Aviation Revitalization Act of 1994 ("GARA"), 49 U.S.C. § 40101, barred plaintiff's design defect claim;

(3) the Court erred when it excluded certain evidence regarding remedial measures;

(4) the Court failed to consider plaintiff's claim that the inspection program set forth in Service Bulletin 133 should never have been implemented or should have been performed only by the manufacturer; and

(5) the Court erred when it determined that defendant's conduct was not the cause of the aircraft that killed Mr. Peter La Haye, Sr.

Rule 59 provides an avenue for both the Court and the parties to correct errors that arose during trial before the case is presented to the appellate court for review. "There are three grounds for granting new trials in court-tried actions under Rule 59(a)(2): (1) manifest error of law; (2) manifest error of fact; and (3) newly discovered evidence." *Brown v. Wright*, 588 F.2d 708, 710 (9th Cir. 1978). Having considered the memoranda, declarations, and exhibits submitted by the parties, the Court finds that plaintiff is not entitled to judgment in her favor or a new trial.

**(1) Right to a Jury Trial**

On September 4, 2003, the Court declined to rule upon plaintiff's challenge to the constitutionality of the Foreign Sovereign Immunities Act, finding instead that the issue was moot because plaintiff had failed to serve and file an adequate jury demand as to defendant Israel Aircraft Industries ("IAI"). *See* Order Denying Plaintiff's Motion for Jury Trial (Dkt. # 179). On the first day of trial, plaintiff's counsel submitted a declaration regarding the method by which the Joint Status Report had been drafted and arguing that the jury demand included therein was intended to leave open the possibility of a jury trial against IAI. *See* Decl. of Arthur Alan Wolk (Dkt. # 184).

Plaintiff did not file a timely motion for reconsideration under Local Civil Rule 7(h) and cannot revisit this issue now that the Court has decided crucial factual issues against her. Even if the Court were to consider the merits of the untimely request for reconsideration, neither counsel's declaration nor the arguments made in the post-trial motion establish manifest error. There is no evidence the demand that was filed with the Court on November 1,

2001, was served on IAI: in fact, the Joint Status Report in which the jury demand was made indicates that all parties except IAI were served. Counsel's declaration shows only that IAI had been involved in preliminary discussions regarding the Joint Status Report and may have been aware that plaintiff intended to demand a jury with regards to some of her claims. After the Court granted IAI's motion to quash service of process on September 24, 2001, however, IAI apparently ceased participating in this litigation and was not served with the jury demand on which plaintiff relies. In addition, the demand included in the Joint Status Report (and in the earlier drafts) was equivocal as to IAI, implicitly recognizing that, if IAI were brought back into the case, plaintiff would not be entitled to a jury trial against that defendant.

Plaintiff's renewed motion for a jury trial is untimely and she has not shown manifest error of law or fact in the Court's prior ruling.

**(2) Design Defect Claim**

On May 2, 2003, the Court granted defendant's motion for summary judgment regarding the applicability of GARA's statute of repose. *See* Order Granting Defendant's Motion for Partial Summary Judgment (Dkt. # 142). Plaintiff did not file a motion for reconsideration of that ruling and has waited until the very end of the litigation to argue that the Court's decision constituted manifest error. To the extent plaintiff is arguing that Donald Hammer provided "new evidence" that justifies this late request for reconsideration, Mr. Hammer was offered as an expert regarding service bulletins, maintenance manuals, and Galvin's work on the ill-fated Westwind 1124A

aircraft. His testimony regarding the "completely new assembly" must be taken in that context and is virtually irrelevant to the legal issue of whether there had been a substantive alteration to the part that was alleged to have proximately caused the crash. In addition, Mr. Hammer provided this "new evidence" on September 12, 2003, and yet plaintiff waited almost a month to argue that this evidence was of any particular moment. Plaintiff's motion for reconsideration of the GARA decision is untimely and fails on the merits.

**(3) Evidence Regarding Remedial Measures**

Plaintiff objects to the exclusion of evidence regarding the addition of the 2.25 inch measurement to the TRW and IAI drawings of the actuator. The Court has no independent recollection of whether it admitted these particular exhibits and must rely on the Clerk's exhibit list and the trial transcript. The exhibit list shows that Exhibit 50 was admitted on the fourth day of trial (September 11, 2003): contrary to plaintiff's assertions, there is no indication that Exhibit 50 was withdrawn. The Court has skimmed the trial transcript in an effort to find any other references to Exhibit 50 but, without some direction from plaintiff, has been unable to locate the alleged withdrawal. The transcript does show, however, that similar documents (Exhibits 544 and 545) were withdrawn on September 15, 2003. Nevertheless, it appears that Exhibit 50, with its revised diagram, remains part of the record: no post-trial relief is necessary or appropriate.

Even if, as appears to be the case, the Court excluded some evidence of defendant's remedial measures, that evidence would not have changed the outcome of this case.

The Court entered judgment against plaintiff because she was not able to prove by a preponderance of the evidence that a defect in the diagram caused the crash of Mr. La Haye's plane. Additional evidence of remedial measures was relevant only to the issue of defect and would not have impacted the Court's causation analysis.

**(4) Implementation of the Inspection Procedures**

In February, 2003, defendant moved for summary judgment regarding all of plaintiff's claims. In its "Motion for Partial Summary Judgment re Post-Delivery Publication Claims" (Dkt. # 121 at 1), defendant sought the dismissal of all claims "based upon alleged defects in procedures to inspect the horizontal stabilizer actuator first published by IAI in 1996." If plaintiff has intended to assert a claim that the implementation of the inspection procedure itself, regardless of the accuracy or adequacy of the instructions, gave rise to strict liability, such a claim should have been raised in response to defendant's motion. It was not. Rather, taking her cue from defendant's framing of the issues (which, in turn, took its cue from the allegations in the complaint), plaintiff argued that there were fact issues regarding both the defective nature of the maintenance instructions/diagrams provided by IAI and Gowin's reliance thereon.

This formulation of the issue was repeated throughout the proceedings in this matter. Plaintiff's trial brief and the joint pretrial order consistently state that the written procedures and drawings provided by defendant were defective. Plaintiff's arguments focused solely on the alleged shortcomings of the written instructions and the

inaccuracies contained in the diagrams: whether the inspection program should have been initiated in the first place and who should perform inspections were never identified as issues. "In short, plaintiff's claim was and always had been that the maintenance instructions provided by IAI were incorrect and misleading. At no point did plaintiff assert that defendant was liable simply for requiring an inspection or for allowing third-party mechanics to conduct the inspection. Such claims, if they had been intended, would have necessitated additional arguments regarding both the deficiencies in IAI's chosen inspection method and the causal relationship between the deficiencies and the crash.

At trial, plaintiff again focused on the adequacy and accuracy of the maintenance instructions and diagrams provided by defendant. Although plaintiff presented evidence from which she could argue that the inspection procedures would not have remedied all of the problems associated with the actuator and/or that the inspection was too difficult for third-party mechanics to perform, the arguments that were actually made during trial did little more than emphasize the need to have accurate, precise, and simple instructions when performing work on critical parts. It was not clear until plaintiff filed her post-trial motion that she was, in fact, asserting that the inspection process itself, separate and apart from the written instructions/diagrams, was an unsafe "product" under the Washington Product Liability Act, RCW § 7.72.010(2). Neither defendant nor the Court addressed plaintiff's implementation/third-party mechanic claims because they had not been adequately asserted in any pre-trial filing, from the complaint to plaintiff's trial brief. In its Memorandum of Decision (Dkt. # 193 at 1-2), the Court expressly relied on

plaintiff's trial brief when identifying the issues that had to be resolved. Plaintiff cannot simply introduce equivocal evidence at trial and then claim to have asserted a new theory of the case. Having prosecuted this litigation on the theory that the written instructions and diagrams provided by IAI were defective, plaintiff has waived her implementation/third-party mechanic claims.

Even if the Court were to allow plaintiff to amend her pleadings and go beyond the trial briefs and pretrial order, she has not proven by a preponderance of the evidence that the inspection program should not have been implemented or that the inspections should have been performed only by the manufacturer. Although there is some doubt regarding the efficacy of the procedure for evaluating the condition of the jackscrews, pulling out and inspecting the tie rod would satisfy a primary goal of the inspection process by allowing the inspector to determine whether the rod itself had bent or failed. The evidence also shows that Third-party mechanics were perfectly capable of inspecting the actuator: the vast majority of the mechanics successfully inspected the part and expert mechanics testified that the procedure was not particularly complex. There were only two instances in which the mechanics had difficulty reassembling the actuator and, according to the testimony elicited by plaintiff, those problems were caused by defects in IAI's instructions and diagrams, not by the complexity of the inspection program itself. To the extent plaintiff has adequately preserved product liability claims regarding defendant's decision to require interim inspections and to allow third-party mechanics to perform them, the preponderence of the evidence does not support those claims.

**(5) Causation**

The Court's finding regarding causation was based on its rejection of Mr. Gowin's testimony regarding his use of IAI's instructions and diagrams. While it is obvious that plaintiff disagrees with the Court's credibility determination, none of the post-trial arguments raised on this issue alters the Court's conclusion that the testimony was not credible for the reasons stated in the Memorandum of Decision.

For all of the foregoing reasons, plaintiff's motion for post-trial relief is DENIED.

DATED this 22nd day of January, 2004.

/s/ Robert S. Lasnik
Robert S. Lasnik
United States
District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SANDRA L. LAHAYE, individually and as personal representative of the Estate of Peter G. LaHaye,

Plaintiff-Appellant,

v.

GALVIN FLYING SERVICE, INC.

Defendant,

and,

ISRAEL AIRCRAFT INDUSTRIES, LTD.,

Defendant-Appellee.

No. 04-35136

D.C. No. CV-01-00982-RSL
Western District of Washington, Seattle

ORDER

(Filed Oct. 13, 2005)

Before: TASHIMA, PAEZ, and CALLAHAN, Circuit Judges.

The appellant's petition for rehearing and suggestion for rehearing en banc are hereby DENIED.

SO ORDERED.

HONORABLE ROBERT S. LASNIK

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF WASHINGTON**

| | |
|---|---|
| SANDRA L. LAHAYE, Individually, and as Personal Representative of the Estate of Peter G. LaHaye, Deceased,<br><br>Plaintiff,<br><br>vs.<br><br>GALVIN FLYING SERVICE, INC., ISRAEL AIRCRAFT INDUSTRIES, LTD, GALAXY AEROSPACE COMPANY, LP, and TRW, INC.,<br><br>Defendants, | No. C01-982L<br><br>**NOTICE OF APPEAL** |

Notice is hereby given that plaintiff Sandra LaHaye, Individually and as Personal Representative of the Estate of Peter La Haye in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order denying plaintiff's motion for post trial relief dated January 22, 2004, the order of final judgment entered in favor of defendant Israel Aircraft Industries entered on the 24th day of September, 2003, the order denying plaintiff's motion requesting the Court to rule that the Foreign Sovereign Immunities Act is unconstitutional and motion for a jury trial and alternative motion for the impaneling of an advisory jury pursuant to F. R. Civ. P. 39(c) dated September 4, 2003, and the order granting partial summary judgment in favor of defendant Israel Aircraft Industries on the 2nd day of May, 2003.

DATED this 16th day of February, 2004.

Respectfully submitted,

/s/ Bradley Stoll

Arthur Alan Wolk, Esquire
Bradley J. Stoll, Esquire
THE WOLK LAW FIRM
1710-12 Locust Street
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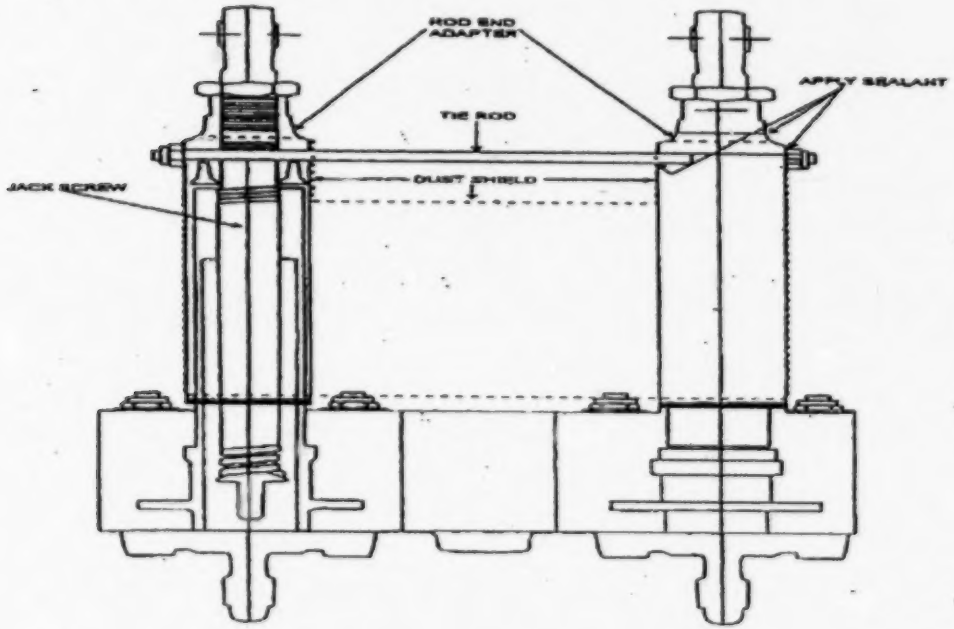
Attorney for Plaintiff

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

| | |
|---|---|
| SANDRA L. LAHAYE, individually and as personal representative of the Estate of Peter G. LaHaye,<br>Plaintiff-Appellant,<br>v.<br>GALVIN FLYING SERVICE, INC.<br>Defendant,<br>and,<br>ISRAEL AIRCRAFT INDUSTRIES, LTD.,<br>Defendant-Appellee. | No. 04-35136<br>D.C. No. CV-01-00982-RSL |

[The following documents were
entered as a part of the Record Excerpts]




Horizontal Stabilizer Trim Actuator Inspection
Figure 601

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | |
|---|---|
| SANDRA L. LaHAYE, individually and as personal representative of the Estate of Peter G. LaHaye, deceased, Plaintiff, v. ISRAEL AIRCRAFT INDUSTRIES, LTD., Defendant. | Case No. C01-982L<br>Seattle, Washington<br>September 9, 2003<br>Volume 2 |

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE

For the Plaintiff:
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Wolk & Genter
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Philadelphia, Pennsylvania 19103

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1215 Fourth Avenue, Suite 1700
Seattle, Washington 98161-1007

* * *

[318] of our maintenance documents had very strong warnings, especially when they were involved with systems that were extremely critical to the operation of the airplane.

Q Now, when you say systems that were extremely critical, did you perform any review or analysis of the pitch control system of this model 1124A aircraft?

A Yes, I did.

Q And did you reach a conclusion to a reasonable degree of certainty in your field as to whether or not the design of this system made it critical to the safe operation of the aircraft?

A The horizontal trim system is absolutely critical to the safe operation of the 1124A.

Q And why is that and how is that?

A It's because of the capability of the horizontal stabilizer to maneuver the airplane. If it is not operating properly, it is so powerful that it can cause the complete loss of control of the airplane.

Q So if that component is that critical, how then does that criticality fit into the obligation of the aircraft manufacturer to design the continuing airworthiness instructions?

A Well, it – it's critically important for the manufacturer to make sure that any type of maintenance instructions that pertain to the horizontal stabilizer be done very carefully, with sufficient warnings to alert the people who are doing the maintenance that this is an extremely flight critical system.

* * *

[374] investigating the causes of airplane crashes?

A Yes, sir. In the last 15 years it's been the primary thrust of my work, with the exception of endeavors in a few other non-associated areas.

Q And, Mr. Sommer, have you been qualified as an expert in the field of aircraft accident reconstruction in state and federal courts throughout the United States?

A Yes, I have. I think I estimated 30 to 40 times.

MR. WOLK: I offer Donald Sommer as an expert in the field of aircraft accident reconstruction.

MR. WILSON: No objection at this point, Your Honor.

THE COURT: Okay. Mr. Sommer is an expert in that area.

Q (By Mr. Wolk) Mr. Sommer, do you have an opinion to a reasonable degree of certainty as to the cause of this accident?

A Yes, I do.

Q What is that opinion?

A The failure of the pitch trim actuator in the 1124A Westwind to remain attached to the associated structure, namely the empennage of the aircraft and the leading edge of the horizontal stabilizer, while the aircraft was in flight, causing the horizontal stabilizer to obtain and maintain a position which rendered the aircraft uncontrollable.

Q As part of your work in determining the cause of this accident, did you attempt to determine whether the horizontal

* * *

[LOGO]

*SERVICE* ***BULLETIN***

**MANDATORY**

SERVICE BULLETIN NO. 1124-27-136

September 1, 1997

SUBJECT: FLIGHT CONTROLS – HORIZONTAL STABILIZER TRIM ACTUATOR JACK-SCREW ASSEMBLY REPLACEMENT

1. PLANNING INFORMATION

A. EFFECTIVITY

MODEL 1124/1124A WESTWIND, all serial numbers.

B. REASON

The analysis of two Horizontal Stabilizer Trim Actuator Jackscrew failures has determined the necessity to replace the Actuator Jackscrew Assemblies.

C. DESCRIPTION

This service bulletin is issued to mandate replacement of the Horizontal Stabilizer Trim Actuator Jackscrews Assemblies. Jackscrew Assemblies will be replaced only in conjunction with an overhaul of the actuator.

D. COMPLIANCE

Compliance with this service bulletin is mandatory within 18 months of the issue date as specified under the replacement schedule matrix which has been developed to

identify the continued airworthiness, of each actuator.

E. APPROVAL

This service bulletin has been reviewed by the Civil Aviation Administration of Israel (CAAI). The design content herein complies with the applicable Civil Aviation Regulations and is CAAI approved.

F. MAN-HOUR REQUIREMENTS

The following information is for planning purposes only:

(1) Estimated man-hours: 4

(2) Suggested number of personnel: 2

The above is an estimate only, based on experienced personnel complying with this service bulletin. It is possible, depending on individual experience levels, that additional or fewer man-hours are required to accomplish this bulletin.

G. MATERIAL

| QTY | PART NUMBER | DESCRIPTION |
|---|---|---|
| 1 | 543502-1 | 1124 Horizontal Stabilizer Trim Actuator |
| 1 | 5435-2-501 | 1124A Horizontal Stabilizer Trim Actuator |

A replacement schedule matrix has been developed to identify units based on age and total time.

Material required may be obtained through Galaxy Aerospace Corporation, New Castle,

Delaware, or authorized ASTRA/WESTWIND Service Centers.

H. TOOLING

No special tooling required.

I. WEIGHT AND BALANCE

Not applicable.

J. ELECTRICAL LOAD DATA

Not applicable.

K. REFERENCES

1124/1124A Westwind Maintenance Manual, 27-40-00. Lucas Aerospace Linear Actuator, 21164-005, Component Maintenance Manual, Revision 2 (or later revision).

L. PUBLICATIONS AFFECTED

1124/1124A Westwind Maintenance Manual, 5-10-00.

2. ACCOMPLISHMENT INSTRUCTIONS

A. Remove Horizontal Stabilizer Trim Actuator, ref. 1124/1124A Westwind Maintenance Manual, 27-40-00, Maintenance Practices.

Install Horizontal Stabilizer Trim Actuator with serialized replacement Jackscrew Assemblies P/N 21164-360 and -361 (as indicated on data plate). Ref. 1124/1124A Westwind Maintenance Manual, 27-40-00, Maintenance Practices.

NOTE: Installed actuator must be overhauled per Lucas Aerospace Linear Actuator, 21164-005, Component

Maintenance Manual, Revision 2 (or later revision).

3. RECORD COMPLIANCE

A. Make the following entry in the aircraft log book:

Service Bulletin No. 1124-27-136, dated September 1, 1997, titled "Flight Controls – Horizontal Stabilizer Trim Actuator Jackscrew Assembly Replacement", has been accomplished this date _____.

B. Complete the attached Certificate of Compliance and return to Galaxy Aerospace Corporation, New Castle, Delaware.

---

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

| | |
|---|---|
| SANDRA L. LA HAYE, individually and as Personal Representative of the Estate of Peter G. La Haye, Deceased,<br><br>Plaintiff,<br><br>vs.<br><br>GALVIN FLYING SERVICE, INC., ISRAEL AIRCRAFT INDUSTRIES, LTD., GALAXY AEROSPACE COMPANY, LP, and TRW, INC.,<br><br>Defendants. | Case No. C01-982L<br><br>Judge Lasnik |

---

THE VIDEOTAPE DEPOSITION OF GREGORY RAYE
TUESDAY, JANUARY 7, 2003

---

The videotape deposition of Gregory Raye, called by the Defendant Israel Aircraft Industries, Ltd., for examination pursuant to the Federal Rules of Civil Procedure, taken before me, the undersigned, Charles A. Cady, Registered Merit Reporter and Notary Public within and for the State of Ohio, taken at the Fairfield Inn, 9783 State Route 14, Streetsboro, Ohio, commencing at 11:45 a.m., the day and date above set forth

* * *

[25] Q Okay.

A I would have to –

Q Why don't you take a minute to at least read through this briefly –

A Okay.

Q – and see if that refreshes your memory at all.

Actually, I would like to exchange this for the deposition copy, because that has my notes of questions to ask on it, if you don't mind.

Q MR. WOLK: I don't mind.

---

(TRW Exhibit 10 was remarked.)

---

Q Does this – have you had a chance to look through this?

A Yes.

Q Okay. Does this document refresh your memory at all in terms of what modifications were made to the actuators at that point, during the overhaul process?

A The specific mods I did not notice were mentioned in the document.

Q Okay. Were there modifications to the jackscrew itself, to your understanding?

[26] A I do understand there were mods to the jackscrews, yes.

Q Okay. Other than the jackscrew, were there modifications to any other part of the actuator design?

A Yes.

Q What were those?

A A modification to the dust shield cover and a modification to the tie rod. And then there were others that I'm not familiar with in detail.

Q What was the modification to the dust shield?

A Sleeves were put on the dust shield cover, little ringed sleeves.

Q The plastic sleeves at the bottom?

A No. There were steel sleeves put externally on the dust shield cover, because dust shields had come in that had somewhere where the tie rod went through. So there were sleeves put on that.

Q Okay. Was that uniformly done to all or just those in view?

A Cannot answer the question at this point.

Q Okay. You mentioned changes to the tie rod. What were those?

[27] A In terms of modifying an actuator coming in, a new tie rod was put in, so it did not go out with the tie rod that came in upon receipt.

Q Oh. So they replaced all the tie rods?

A They replaced the tie rods on units that went out that were newly modified.

Q Okay. But the tie rod design itself, and in particular the jackscrew rod and tie rod structure was not changed; is that correct?

A That's correct.

Q What was Astra Jet asking Lucas to do at this point?

A In reference to this document here?

Q Yes.

A It appears in this document the discussion was to determine what the frequency of the overhaul period should be, and they were requesting Lucas to set up to perform the overhaul.

Q Okay. And what happened after this meeting, if you can recall?

A In terms of the specific meeting, I was not part of the meeting, so I really don't know what happened directly afterward, if you know what I mean.

Q I understand and my question wasn't clear. [28] I'm talking as a general matter, can you discuss the process that Lucas went through after this?

A The continued discussions were to come up with what the modification would be, provision to modify some quantity of units that were in the field, and have those units modified by Lucas Aerospace.

Q And that involved putting in the new jackscrews?

A Yes.

Q Okay. Once they had made the decision about how to modify the jackscrew, how did the process follow after that?

A Once the decision was made to modify it?

Q Yes.

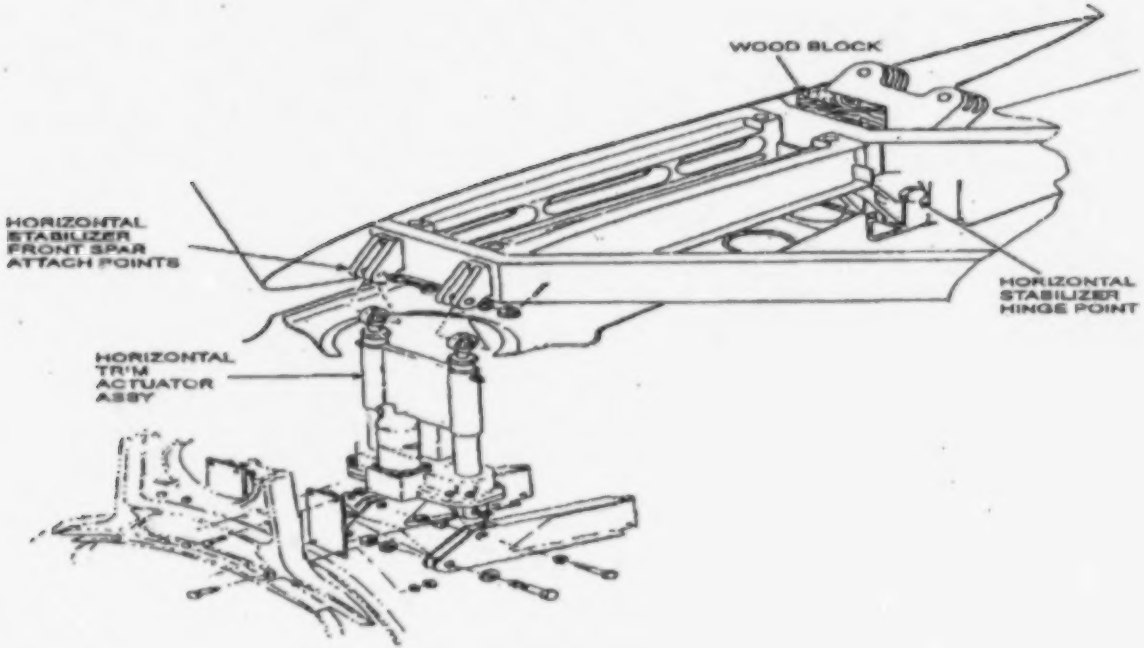
WOOD BLOCK
HORIZONTAL STABILIZER FRONT SPAR ATTACH POINTS
HORIZONTAL TRIM ACTUATOR ASSY
HORIZONTAL STABILIZER HINGE POINT

Figure 1

A The units – once the decision was made to modify, there were parts procured, provision put in place, and then the units were returned back to Lucas Aerospace through Galaxy at that time, and the product was then modified and shipped back out through Galaxy.

Q Okay. And so can you describe the overhaul process, generally?

A It would be defined in the CMM. And if I were to try and define it, I may leave some aspects [29] of it out. But it was to modify the components that were specified in whatever the final agreement was.

Q Okay. Are you familiar generally, though, with the process by which the part would come in?

A Yes, generally.

Q Describe what that –

A Generality, yes.

Q Thank you.

A Generally, the part came in, and for this particular actuator it was agreed we would replace the jackscrews, the torque tubes, again, verify the dust shield cover and the condition of it and put the sleeving on, also replace the tie rod.

There was some activity done with the motors in the horizontal stabilizer. The product would be completely reassembled with these new components, acceptance tested, inspected, and then shipped back out to Galaxy.

Q Can you describe the acceptance test process generally?

A The acceptance test is performed on a test rate that provides the loading specified in the acceptance test procedure.

[30] MR. PETRAK: Let's mark this as 11.

---

(TRW Exhibit 11 was marked.)

---

Q First of all, have you seen Exhibit 11 before?

A Not that I can remember.

Q Okay. Who is John Conerty?

A John Conerty is the contractors administrator that works in Englewood, New Jersey –

Q Okay.

A – at the time.

Q He references here to attempting to work – "working of the program to," quote, "Hard Time" the actuators. Is that a reference to the life limit that you discussed earlier?

A Yes.

Q Okay. Was Lucas attempting to determine what the appropriate life limit should be for the actuators?

A At this point John Conerty is asking for information to support what the hard time should be.

Q Okay. In addition to the life – was a life [31] limit put on the jackscrews or on the actuator?

A I'd have to – I can't answer. It's –

Q All right. As part of this process, are you aware that there was a mandatory overhaul period put on the actuator itself?

A Yes.

Q Okay. And that's separate from the life limit that we're discussing?

A That's the part I can't – I can't recall if the jackscrews were driving the life limit or the overhaul or not.

MR. PETRAK: Let's mark this as 12, please. Okay. And let's mark this as 13.

---

(TRW Exhibits 12 and 13 were marked.)

---

Q Have you seen either Exhibit 12 or 13 before today?

A No.

Q Okay. Do you recall discussions with Mr. Stone during the 1997 time frame regarding developing blueprints and a CMM for the 005 actuator?

A I recall conversations regarding the development of the CMM for the 005 actuator.

[32] Q And could you tell us for the record what "CMM" references?

A Component maintenance manual.

Q Is this different from the overhaul manual?

A The words have been used in our business interchangeably.

Q Okay. So that is something that Lucas would be developing?

A Yes.

MR. PETRAK: Let's go ahead and mark 14.

---

(TRW Exhibit 14 was marked.)

---

Q Have you seen Exhibit 14 before?

A No.

Q Okay. There's a reference in here from Mr. Stone to a conversion blueprint.

Do you have an understanding of what that references?

(Thereupon, a telephone call was received.)

(Recess taken.)

MR. PETRAK: Could you read the pending question, please.

(The record was read.)

* * *

[113] Q And it refers to the change, the modifications required to make one of these actuators, a 005 model, for use on the 1123 aircraft.

Do you see that under "Introduction"?

A Yes.

Q Okay. Now, I'd like you to go to Item Number 3, if you would, where they're referring to the "horizontal stabilizer trim limits."

Do you see that?

A Yes.

Q And it says that another change introduced is the cancellation of the out of trim switch and mechanism.

Do you see that?

A Yes.

Q What was the out-of-trim switch that was included in the -1 actuator and deleted in the -5 actuator?

A I don't know.

Q Do you know if the purpose of such an item is to electrically alert the flight crew that an out-of-trim condition exists?

A Don't know.

Q Now, according to TRW Number 10, there were some modifications that were to be made in the [114] actuators when they were returned for overhaul; isn't that correct?

A That's correct.

Q And one of those modifications was the introduction of a bushing or sleeve in the dust shield; is that correct?

A I would have to confirm. I can't recall.

Q All right. Well, let's see if we can't – here we go. Let's see if we can't – let's see if we can't back up here.

First of all, this is a meeting between Lucas and the folks at Astra Jet Corporation, right?

A Yes.

Q Astra Jet Corporation was at that time representing Israel Aircraft Industries in this country, correct?

A Yes.

Q All right. Now, in the "Background" they point out that there were two failures of the pitch trim actuator. One was a -1 and the other a -501, referring to the jackscrews.

Do you see that?

A Yes.

Q And that they were sent to Israel Aircraft [115] Industries, for analysis.

Do you see that?

A Yes.

Q At which time Israel Aircraft Industries wanted to mandate a hard time for overhaul of the actuator, correct?

A Yes.

Q All right. And what they were doing at this meeting was trying to come up with a feasibility program for Lucas to overhaul some 340 units that were in the field so they could kind of start from zero.

Is that a fair statement?

A Yes.

Q All right. And Lucas mentioned two vendors that might have the ability to overhaul the units. One was Consolidated Aircraft and the, other, Jet Services. But Astra Jet Corporation preferred Lucas to be the only overhaul agency for the actuator.

Do you see that?

A Yes.

Q All right. And why was that? Do you remember that?

A I believe in that case, when we had the [116] discussions, or they had the discussions, it was only because we were the original equipment provider, and these products would be modified at that time in addition to a traditional overhaul.

Q Right. And the other point was that this was a complex problem and a complex actuator, and they had confidence in Lucas' ability to make these inspections, repairs, overhauls, and modifications.

Is that a fair statement?

A Well, again, it wasn't as much the complexity as it was a modification versus an overhaul. And since it was modification and we were providing new components, they wanted it to come back to Lucas.

Q You were the best guys to be able to modify the units, in their opinion?

A I don't know in their opinion.

Q Well, let's take a look at what it says. It says, "Due to the complexity of this problem" –

A Wait.

Q – "AJC," which is Astra Jet Corporation, "would prefer Lucas to be the only overhaul agency for this actuator."

* * *

---

[Logo] **GALAXY AEROSPACE**

Date: February 12, 1997

To: Mike Wuebbling cc: Tom Vail

From: Duncan Clark

Ref: Business Plan – Horizontal Stabilizer Trim Actuator

## Introduction

This document outlines the activities and projected expenses associated with the Jack Screw Replacement and Hard Time Overhaul Program planned for the Horizontal Stabilizer Trim Actuator fitted to the Westwind Aircraft.

## Background

The Westwind Aircraft were originally manufactured by IAI fitted with a Lucas Aerospace Stabilizer Trim Actuator. Maintenance to this unit was originally specified as "on condition" with no overhaul life limit "Hard Time" specified in the design. During an inspection, an operator found a horizontal stabilizer actuator jackscrew sheared causing the rod end to separate from the jackscrew. This condition has now been found on two aircraft.

Galaxy Aerospace Corporation has contacted Lucas Aerospace, the original manufacturer, to provide services to establish a "Hard Time" overhaul program on the actuator and institute a "Life Limit" on the jackscrews. In order to accomplish this task Lucas Aerospace will have to;

1. Revise the component overhaul manual.
2. Manufacture spare parts.
3. Requalify obsolete materials.

4. Provide repair and overhaul services in line with the program parameters.

Agreement has been reached by both parties to undertake this program on an exclusive arrangement.

Effectivity

The Lucas part numbers effected by this modification are the 21164-001 and the 21164-005 actuators fitted to the Jet Commander and Westwind series of aircraft. There are differences in these actuators and their maintenance is detailed in separate Component Maintenance Manuals. Following is a matrix detailing the application of these units by Aircraft Type:

| Aircraft Type | Lucas Part Number | IAI Part Number | Part Description |
|---|---|---|---|
| 1124 | 21164-005 | 543502-1 | Actuator, Horizontal Stabilizer Trim |
| 1124A | 21164-005 | 543502-501 | Actuator, Horizontal Stabilizer Trim |
| 1123 | 21164-005 | 543021-501 | Actuator, Horizontal Stabilizer Trim |
| 1121 | 21164-001 | 543008-501 | Actuator, Horizontal Stabilizer Trim |

The Lucas units fitted to the 1124, 1124A and the 1123 are very similar. There is a difference between the shaft travel on each of these units which precludes direct interchangeability. Lucas is to provide contracted Component Maintenance documentation against the Lucas part numbers listed in this Matrix.

Service Criteria

These 21164 series actuators were originally released into service "On Condition". IAI is now requiring an overhaul life for the actuator of 2,500 hours/cycles. IAI will also impose a life limit on the jack screw and torsion tubes of 10,000 hours/cycles. Since this component was originally installed "On Condition" most operators are not expected to have information regarding the hours and cycles for the components currently installed on their aircraft. The only units that will have time and cycle records are units that were installed as original equipment. We project that only 2% of the operators will have aircraft that will fall in this category.

A modified UNC thread process is being incorporated on the new jack screw which will reduce the stress concentration at the end of the threaded area where breakage has occurred. This modification will necessitate the changing of all jack screws at the time of their first overhaul. At this point, the unit will be scheduled for an overhaul every 2,500 hours and the jack screw will have an established life limit of 10,000 hours.

Timing of Program

Currently there has not been an AD issued requiring this replacement or overhaul, however, an AD note action could be taken by the FAA at any time. IAI has requested the Horizontal Stabilizer Trim Actuator limitations be published immediately as a revision to Chapter 5 of the maintenance manual. IAI is requesting that the unit be overhauled and jack screw replaced within one year or 500 hours of the issuance of this revision. GAC has established a comprehensive plan introducing the Hard Time overhaul

requirement and jack screw replacement which will be submitted to IAI for Israel CAAI regulatory review. By offering such a plan we hope the regulatory agency will view this action favorably to unnecessarily avoid grounding of any aircraft.

Implementation

Since the pitch trim actuator has been "on condition" the total hours of operation on the existing units cannot be determined. GAC will communicate to the operators as follows:

1. The purpose of our decision to require a Hard Time for overhaul and jack screw replacement.

2. Ask the operator to supply us with information concerning aircraft total time and pitch trim actuator serial numbers. Lucas will be able to further define the age of the actuators based on this information.

3. GAC will develop a replacement matrix to identify the oldest units which are in the highest time aircraft as the first replacements. GAC will then assign the schedule to the operators regarding the compliance period for their specific aircraft.

This program is scheduled to be completed by July 1998.

Manuals

CMM Manuals/Technical Bulletins

The introduction of a "Hard Time" for the Horizontal Stabilizer Trim Actuator necessitates the amendment of the manuals for the 21164 series units. The -005 actuator manual will require introduction of a "Overhaul Life", a overhaul procedure, and a jack screw "Life Limit". Lucas Aerospace is amending the Component Maintenance Manuals for the -001 and -005 units to incorporate an updated overhaul criteria, Additionally, Lucas Aerospace will provide re-qualification services for obsolete materials and incorporate these changes into the applicable CMMs. The -001 series actuator, used on the 1121 Jet Commander, will require more work to re-qualify as some of the material used during manufacturing is now obsolete. The cost for the manual revision is included in the Lucas material net charges to GAC.

Overhaul Recommendations

Lucas will specify the overhaul replacement frequency for consumable parts in the CMM.

AMM Manuals/Technical Bulletins

IAI is responsible for all updates to the Aircraft Maintenance Manual relating to this activity. GAC will issue a revision to Chapter 5 of the Westwind maintenance manual calling out the Hard Time overhaul and Jack Screw life limit. GAC/IAI will coordinate the issuance of a Service Bulletin announcing the need for replacing the jack screw with a new modified unit and a Service Information Letter detailing the Hard Time Overhaul and Jack

Screw Replacement Program which has been established to support these modifications.

**Spares**

To initiate this program, Galaxy Aerospace Corp. will issue a purchase order for the manufacture of the long lead time high dollar items. Per agreement with Lucas, this material will be the property of GAC and ensure exclusivity in support of the program.

Orders will be placed for a total of 760 jack screws and torsion tubes, two per unit. The delivery will be at a rate of 30 ship sets of each part per month. Payment terms will be net 30. All parts will become the property of Galaxy Aerospace Corp. and stored at Lucas facilities for utilization within this program. They will be managed by Lucas as customer furnished material.

The initial order quantity has been established to provide 50% of the materials that will be needed to support this program. After the initial order, Galaxy Aerospace Corp. has the ability to modify order quantities so as to protect against any over ordering. Based on a 12 month program, the jack screw and torque tube order schedule would took as follows:

| *Part Number* | *Keyword* | *Total Required* | *Firm Order* | *Option 1* | *Option 2* |
|---|---|---|---|---|---|
| 304409-06 | -005 Jack Screw | 620 | 380 | 120 | 120 |
| 21164-1600 | -005 Torque Tube without Worm | 380 | 226 | 80 | 74 |
| 21164-1610 | -005 Torque Tube without Worm | 380 | 226 | 80 | 74 |
| 304409-04 | -001 Jack Screw | 140 | 70 | 40 | 30 |

Galaxy Aerospace Corp. will have the ability to execute Option 1 anytime within the first 90 days of the contract. Option 2 may be exercised anytime within the first 180 days of the contract. Based on a 12 month program, the items will be delivered at a production schedule of 30 ship sets per month. The payment terms will be Net 30. for the material delivered in the month it is to be used. First delivery is estimated as June 1, 1997.

Program Start Date Target

Lucas is targeting June 1, 1997 as the start date of the overhaul program for the -005 series units. The -001 series units will not be on line at the same time, due to requalification issues involving some of the spare parts required.

Capacity Issues

The current plan calls for a total of 340 aircraft units plus spares to be transitioned from "On Condition" to "Hard Time" status. This is to be accomplished within a maximum of 18 months from 12/31/96. Lucas is currently gearing the overhaul program to be completed within a 12 month time frame beginning July 1, 1997 to meet our requirements. The monthly overhaul rate to complete the project in 12 months will be 30 units.

PMA Issues

In order for Lucas Aerospace to provide 8130 tagging services, it is necessary for Lucas Aerospace to have FAA PMA approval for equipment to be installed on IAI manufactured Aircraft. Lucas submitted the necessary forms to

IAI for this approval in June of 1996. In order to avoid program delays, CAC/IAI must promptly return these certification forms to Lucas to facilitate their FAA PMA approval.

Customer Interface

Galaxy Aerospace Corp. will be the primary interface with the customer and is responsible for introducing this requirement into the marketplace. The customer is defined as, but not limited to, operators, service centers and FBO's. Galaxy Aerospace Corp. will be responsible for the communication of the Aircraft Service Bulletin to all customers. All retrofits will be handled through Galaxy Aerospace Corp. Lucas will only deal directly with Galaxy Aerospace Corp. on this program. Any customer requests for services received by Lucas will be referred to Galaxy Aerospace Corp. Galaxy Aerospace Corp. will be responsible for notifying the customer of the Service Bulletin, scheduling the overhaul of the customer units, invoicing and billing to the customer.

Exchanges/Pool Units

Since there is hardware that has to be removed along with the old unit and reinstalled on the new unit prior to installation, the best way to approach this program is by offering exchange units. The amount of time it takes for the customer to install the exchange unit and return the removed core to GAC will affect th size of the exchange pool. We presently estimate that 30 units should be sufficient for this pool. A Customer Property Repair Program was considered, however, the program costs would be too high and the turn time required for the Hard

Time overhaul is too long to accommodate such a program. Galaxy Aerospace will work out the details of scheduling the exchange units with the customer or service centers involved to ensure a steady flow of core units to the Lucas repair facilities.

Availability of LRUs

Currently Galaxy Aerospace owns 8 cores that will be utilized in the pool. We currently need an exchange pool of 30 units to adequately support this program. We have a verbal commitment from Atlantic Aviation to rent us 20 units for this program. Toward the end of the program we will *not* overhaul all the returned units since they will have no immediate sales value.

Repair Turn Times

As previously stated this is a relatively ambitious program in terms of program life. There are approximately 340 aircraft that require this overhaul in a twelve month period. We are currently targeting 30 units per month. Current capacity is limited to 20 units per month per test rig, not including overtime. At the present time Lucas has one test rig and is setting up a second test rig in support of this program. It is proposed that one test rig will be at LAPSA and the other test rig will be at LACSA.

Shop Processing Time

Lucas Aerospace will perform the above services within 20 days of receipt of core returns at their designated facility. The maximum number of returns will be 30 units per month. Galaxy Aerospace Corp. may return more

than 30 units per month but Lucas cannot offer a 20 day turn time on quantities over 30 units per month.

**Warranty Information**

Aircraft Warranty

All units are outside the original aircraft warranty period.

R & O Warranty

Galaxy Aerospace Corp. has negotiated with Lucas to provide a 1,000 hour or 24 month R & O Warranty for units Hard Timed at Lucas facilities. Additionally, Galaxy Aerospace Corp. requested that the warranty take effect the date the unit is released from GAC, not the date the unit is released from Lucas. Lucas has agreed to this request and it will be the responsibility of Galaxy Aerospace to prove the date of dispatch. Both parties will develop a procedure for tracking dispatch date of equipment from Galaxy Aerospace Corporation.

**Pricing Information**

Lucas has committed to giving Galaxy Aerospace Corporation a Firm Fixed Price for the zero time overhaul of these horizontal stabilizer trim actuators by February 14, 1997. Galaxy Aerospace is looking for firm fixed pricing rather than a time and material approach. Although there will be a fine fixed price, Lucas must receive a repairable core to be overhauled. Lucas will only be allowed to charge additional money if the unit has damaged bodies or is missing repairable assemblies. In these instances Galaxy

Aerospace will be notified prior to overhaul for approval to proceed.

Payment Schedule

A Purchase Order for 50% of the long lead time high dollar items is to be issued to Lucas Aerospace in order to initiate this program. Lucas, has agreed to bill us for the parts on the initial Purchase Order at a rate of 30 shipsets per month beginning on the first month of the program. Terms have been established on all invoices as net 30 days. Cost Schedules for the 12 month program are attached to aid in financial planning.

Per these schedules, on the first of each month an invoice will be issued to cover the cost of the initial spare parts purchase order for 30 shipsets. As units are repaired an additional invoice will be issued for Labor and all of the repair parts used. The unit invoice will reflect a credit for the parts ordered on the initial P.O. and each unit will have it's own invoice.

Lucas Repair and Overhaul Certification

Lucas has agreed to provide all repair and overhaul services directly to Galaxy Aerospace Corporation based on our Purchase Commitment of their long lead production items. Lucas will investigate, repair, overhaul and provide certification documentation for all units returned. Upon dispatch to GAC, all units will be released with an 8130 tag and an investigation report. All repairs will be released with a repair warranty.

**98-20-35 ISRAEL AIRCRAFT INDUSTRIES (IAI), LTD.:** Amendment 39-10802. Docket 98-NM-108-AD. Supersedes AD 98-05-09, Amendment 39-10370.

Applicability: All Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes; certificated in any category.

NOTE 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the trim actuator of the horizontal stabilizer due to failure of the jackscrews, which could result in reduced controllability of the airplane, accomplish the following:

**RESTATEMENT OF REQUIREMENTS OF PARAGRAPHS (a) AND (b) OF AD 98-05-09:**

(a) Perform an inspection of the trim actuator of the horizontal stabilizer to verify jackscrew integrity and to detect excessive wear of the tie rod, in accordance with Commodore Jet Service Bulletin SB 1121-27-023, dated August 14, 1996, or Revision I, dated May 28, 1997 (for

Model 1121, 1121A, and 1121B series airplanes); Westwind Service Bulletin SB 1123-27-046, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1123 series airplanes); or Westwind Service Bulletin SB 1124-27-133, dated August 14, 1996, or Revision I, dated May 28, 1997 (for Model 1124 and 1124A series airplanes); as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have accumulated 6,000 or more total flight cycles, or on which the horizontal trim actuator has accumulated 2,000 or more flight cycles, as of April 10, 1998 (the effective date of AD 98-05-09, amendment 39-10370): Inspect within 50 flight hours after April 10, 1998. Repeat the inspection thereafter at intervals not to exceed 300 flight hours (for Model 1121, 1121A, 1121B, and 1123 series airplanes); or 400 flight hours (for Model 1124 and 1124A series airplanes); as applicable.

(2) For airplanes that have accumulated less than 6,000 total flight cycles, and on which the horizontal trim actuator has accumulated less than 2,000 total flight cycles, as of April 10, 1998: Inspect at the time specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) For Model 1121, 1121A, 1121B, and 1123 series airplanes: Inspect within 300 flight hours after April 10, 1998. Repeat the inspection thereafter at intervals not to exceed 300 flight hours.

(ii) For Model 1124 and 1124A series airplanes: Inspect within 400 flight hours after April 10, 1998. Repeat the inspection thereafter at intervals not to exceed 400 flight hours.

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD, prior to further flight, replace the actuator or tie rod, as applicable, in accordance with Commodore Jet Service Bulletin SB 1121-27-023, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1121, 1121A, and 1121B series airplanes); Westwind Service Bulletin SB 1123-27-046, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1123 series airplanes); or Westwind Service Bulletin 1124-27-133, dated August 14, 1996, or Revision I, dated May 28, 1997 (for Model 1124 and 1124A series airplanes); as applicable.

**NEW REQUIREMENTS OF THIS AD:**

(c) Within 18 months after the effective date of this AD, replace the trim actuator of the horizontal stabilizer with a modified trim actuator with modified jackscrew assemblies (part number 21164-362 and -363 for Model 1121, 1121A, and 1121B series airplanes; part number 21164-360 and -361 for Model 1123 series airplanes; or part number 21164-360 and -361 for Model 1124 and 1124A series airplanes), in accordance with Commodore Jet Service Bulletin SB 1121-27-025, dated December 22, 1997 (for Model 1121, 1121A, and 1121B series airplanes); Westwind Service Bulletin SB 1123-27-047, dated September 1 1997 (for Model 1123 series airplanes); or Westwind Service Bulletin SB 1124-27-136, dated September 1, 1997 (for Model 1124 and 1124A series airplanes); as applicable. Accomplishment of this replacement terminates the repetitive inspections required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

NOTE 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM-116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with the following Westwind and Commodore Jet service bulletins, as applicable, which contain the specified effective pages:

| Service Bulletin Referenced and Date | Page Number Shown on Page | Revision Level Shown on Page | Date Shown on Page |
|---|---|---|---|
| Westwind SB 1124-27-133, August 14, 1996 | 1-6 | Original | August 14, 1996 |
| Westwind SB 1124-27-133, Revision 1, May 28, 1997 | 1-4 | 1 | May 28, 1997 |
| | 5, 6 | Original | August 14, 1996 |
| Westwind SB 1123-27-046, August 14, 1996 | 1-6 | Original | August 14, 1996 |

| | | | |
|---|---|---|---|
| Westwind SB 1123-27-046 Revision 1, May 28, 1997 | 1-4 | 1 | May 28, 1997 |
| | 5, 6 | Original | August 14, 1996 |
| Westwind SB 1124-27-136 September 1, 1997 | 1-3 | Original | September 1, 1997 |
| Westwind SB 1123-27-047 September 1, 1997 | 1-3 | Original | September 1, 1997 |
| Commodore Jet SB 1121-27-025, December 22, 1997 | 1-3 | Original | December 22, 1997 |
| Commodore Jet SB 1121-27-023, August 14, 1996 | 1-6 | Original | August 14, 1996 |
| Commodore Jet SB 1121-27-023, Revision 1, May 28, 1997 | 1-4 | 1 | May 28, 1997 |
| | 5, 6 | Original | August 14, 1996 |

The incorporation by reference was approved previously by the Director of the Federal Register as of April 10, 1998 (63 FR 11106, March 6, 1998). Copies may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

NOTE 3: The subject of this AD is addressed in Israeli airworthiness directive 27-97-09-02, dated September 4, 1997.

(g) This amendment becomes effective on November 3, 1998

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Seattle, WA 98161 (206) 623-4100

Attorneys for Defendant
ISRAEL AIRCRAFT INDUSTRIES, Ltd.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

| | |
|---|---|
| SANDRA L. LA HAYE, individually and as Personal Representative of the Estate of Peter G. La Haye, Deceased.<br><br>Plaintiff,<br><br>vs.<br><br>GALVIN FLYING SERVICE, INC., ISRAEL AIRCRAFT INDUSTRIES, LTD., GALAXY AEROSPACE COMPANY, LP, and TRW, INC.,<br><br>Defendants. | NO. C01-0982L<br><br>DECLARATION OF ARYEH KLEIN IN SUPPORT OF ISRAEL AIRCRAFT INDUSTRIES, LTD.'S MOTION TO QUASH |

Aryeh Klein deposes as follows:

1. My name is Aryeh Klein. I am the Deputy General Counsel for Israel Aircraft Industries, Ltd. The following is based on my personal knowledge.

2. The capital stock in Israel Aircraft Industries International, Inc. is owned by Israel Aircraft Industries,

RAFT

FAA Repair Station
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GALVIN FLYING

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REMOVED OLD ACTUATOR JACK SCREW P/N 21161-005 S/N 0481-00AA. INSTALLED NEW ACTUATOR JACK SCREW P/N 21161-005 S/N 0276-09AA IAW CH 27-40-00 PG'S 401, 402, 403, 404, 405 & 406 PAR 2A-B, STEPS 1-10 & 1-15 PARA 3A-B STEPS 1-5 & 1-11. CHECKED TRAVEL IAW CH 27-00-00 PG 203. OP'S AND TRAVEL CHECK OK. ALL WORK PERFORMED ON WORK ORDER 13390 IS APPROVED FOR RETURN TO SERVICE.

Date 2-26-98 Signature

Galvin Flying Service, Inc.
6587 Perimeter Road
Seattle, WA 98108
Repair Station HUNR846E

50PL

e altimeter system & altitude reporting equipment tests & pections required by paragraph (a.1). FAR 91.411 have been formed & found to comply with Appendix E, FAR 43.

ol Airdata/Alt C/P Airdata/Alt ~~Blind Enc/Stby Alt~~

s/n 1151 s/n 551 s/n _____

ted to 50 K tested to 50 K tested to _____ K

e cert 3.24.98 date cert 3.24.98 date cert _____

F _____ WO# _____

te 3.27.98 WO# DEA2 INSP ID# _____

Duncan Avionics: Seattle, Wash. CRS# JG7R076J

N 50PL

The ATC transponder's tests and inspection required by paragraph (a.), FAR part 91.413 have been performed and found to comply with Appendix F, FAR part 43 and paragraph (c) Appendix E part 43 and is approved for return to service.

Transponder(s) tested: # 1 and # 2

Date 3.24.98 WO# DEA2

Insp. by _____

for Duncan Avionics: Seattle, Wash. CRS# JG7R076J

| HT FORWARD: | | |
|---|---|---|
| TO DATE: | | |

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Ltd. Israel Aircraft Industries, Ltd. is incorporated in Israel, has its principal place of business in Israel, and is wholly owned by the foreign sovereign of Israel.

4. Israel Aircraft Industries International, Inc. is not an agent for its parent, Israel Aircraft Industries Ltd. Israel Aircraft Industries Ltd. has not authorized Israel Aircraft Industries International, Inc. to accept service of process on its behalf.

5 Israel Aircraft Industries International, Inc. has its own employees, its own financial records, and makes its own internal decisions on a daily basis.

6. Israel Aircraft Industries Ltd. does not maintain offices in the United States and has not designated or maintained a registered agent for service of process in the United States.

7. Israel Aircraft Industries Ltd. has not been properly served with a summons and complaint in this action.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Aryeh Klein
Aryeh Klein

August 5, 2001
date

Lod, Israel
Place